

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 1834

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 7 (legislative day, JANUARY 25), 1994

Mr. BAUCUS (by request) (for himself and Mr. LAUTENBERG) introduced the following bill; which was read twice and ordered referred to the Committee on Environment and Public Works for consideration only of matters within that Committee's jurisdiction, provided that if and when reported from the Committee, the bill then be referred to the Committee on Finance for consideration only of matters within that Committee's jurisdiction for a period not to exceed thirty session days

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## A BILL

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Superfund Reform Act of 1994”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

## TITLE I—COMMUNITY PARTICIPATION AND HUMAN HEALTH

- Sec. 101. Purposes and objectives.
- Sec. 102. Early, direct and meaningful community participation.
- Sec. 103. Community working groups.
- Sec. 104. Citizen information and access offices.
- Sec. 105. Response to comments.
- Sec. 106. Multiple sources of risk demonstration projects.
- Sec. 107. Assessing risks from multiple sources.
- Sec. 108. Multiple sources of risk in priority setting.
- Sec. 109. Disease registry and medical care providers.
- Sec. 110. Substance profiles.
- Sec. 111. Determining health effects.
- Sec. 112. Public health and related health activities at National Priorities List sites.
- Sec. 113. Health studies.
- Sec. 114. Distribution of materials to health professionals and medical centers.
- Sec. 115. Grant awards/contracts/community assistance activities.
- Sec. 116. Public health recommendations in remedial actions.
- Sec. 117. Agency for Toxic Substances and Disease Registry notification.

## TITLE II—STATE ROLES

- Sec. 201. State authority.
- Sec. 202. Transfer of authorities.
- Sec. 203. State role in determination of remedial action taken.
- Sec. 204. State assurances.
- Sec. 205. Siting.
- Sec. 206. The National Priorities List.
- Sec. 207. The State Registry.

## TITLE III—VOLUNTARY RESPONSE

- Sec. 301. Purposes and objectives.
- Sec. 302. State voluntary response program.
- Sec. 303. Site characterization program.

## TITLE IV—LIABILITY AND ALLOCATION

- Sec. 401. Response authorities.
- Sec. 402. Compliance with administrative orders.
- Sec. 403. Limitations to liability for response costs.
- Sec. 404. Liability.
- Sec. 405. Civil proceedings.
- Sec. 406. Limitations on contribution actions.
- Sec. 407. Scope of rulemaking authority.
- Sec. 408. Enhancement of settlement authorities.
- Sec. 409. Allocation procedures.

## TITLE V—REMEDY SELECTION

- Sec. 501. Purposes and objectives.
- Sec. 502. Cleanup standards and levels.
- Sec. 503. Remedy selection.
- Sec. 504. Miscellaneous amendments to section 121.
- Sec. 505. Response authorities.
- Sec. 506. Removal actions.

Sec. 507. Transition.

#### TITLE VI—MISCELLANEOUS

Sec. 601. Interagency agreements at mixed ownership and mixed responsibility facilities.

Sec. 602. Transfers of uncontaminated property.

Sec. 603. Agreements to transfer by deed.

Sec. 604. Alternative or innovative treatment technologies.

Sec. 605. Definitions.

Sec. 606. Conforming amendment.

#### TITLE VII—FUNDING

Sec. 701. Authorizations of appropriations.

Sec. 702. Orphan share funding.

Sec. 703. Agency for Toxic Substances and Disease Registry.

Sec. 704. Limitations on research, development and demonstration programs.

Sec. 705. Authorization of appropriations from general revenues.

Sec. 706. Additional limitations.

#### TITLE VIII—INSURANCE

Sec. 801. Short title.

Sec. 802. Environmental Insurance Resolution Fund.

Sec. 803. Financial statements, audits, investigations, and inspections.

Sec. 804. Stay of pending litigation.

Sec. 805. Sunset provisions.

Sec. 806. Sovereign immunity of the United States.

Sec. 807. Effective date.

#### TITLE IX—TAX

Sec. 901. Amendments to the Internal Revenue Code of 1986.

Sec. 902. Environmental fees and assessments on insurance companies.

Sec. 903. Funding provisions for Environmental Insurance Resolution Fund.

Sec. 904. Resolution Fund not subject to tax.

## 1      **TITLE I—COMMUNITY PARTICIPATION**

## 2                      **AND HUMAN HEALTH**

### 3      **SEC. 101. PURPOSES AND ACTIVITIES.**

4              The purposes and objectives of the community par-  
5      ticipation activities required by this title are to—

6              (a) inform citizens and elected officials at all  
7              levels of government of the existence and status of  
8              facilities listed on the National Priority List and

1 contaminated sites identified on State Registries (as  
2 established by section 207 of this Act);

3 (b) provide citizens with information regarding  
4 the Superfund identification and cleanup process  
5 and maintain lists of technical, health and other rel-  
6 evant experts licensed or located in the state who are  
7 available to assist the community;

8 (c) ensure wide dissemination of and access to  
9 information in a manner that is easily understood by  
10 the community, considering any unique cultural  
11 needs of the community, including presentation of  
12 information orally and distribution of information in  
13 languages other than English; and

14 (d) ensure that the President is aware of and  
15 considers the views of affected communities.

16 **SEC. 102. EARLY, DIRECT AND MEANINGFUL COMMUNITY**  
17 **PARTICIPATION.**

18 (a) Section 117(e)(1) of the Comprehensive Environ-  
19 mental Response, Compensation, and Liability Act of  
20 1980, referred to in this Act as “the Act” (42 U.S.C.  
21 9617) is amended by amending the first sentence to read  
22 as follows:

23 “(1) **AUTHORITY.**—Subject to such amounts as  
24 are provided in appropriations Acts and in accord-  
25 ance with rules promulgated by the President, the

1 President may make grants or services available to  
2 any group of individuals which may be affected by  
3 a release or threatened release of a hazardous sub-  
4 stance or pollutant, or contaminant at or from a fa-  
5 cility where there is significant response action  
6 under this Act including, a site assessment, remedial  
7 investigation/feasibility study, or removal or remedial  
8 action.”.

9 (b) Section 117(e) of the Act is amended by striking  
10 paragraph (2) and inserting in the following:

11 “(2) AMOUNT.—The amount of any grants or  
12 services may not exceed \$50,000 for a single recipi-  
13 ent of grants or services. The President may waive  
14 the \$50,000 limitation in any case where such waiv-  
15 er is necessary to carry out the purposes of this sub-  
16 section. Each recipient of grants or services shall be  
17 required, as a condition of the grants or services, to  
18 contribute at least 20 percent of the total costs of  
19 the technical assistance for which such grants and  
20 services are made. The President may waive the 20  
21 percent contribution requirement if the grants or  
22 services recipient demonstrates financial need, and  
23 such waiver is necessary to facilitate public partici-  
24 pation in the selection of remedial action at the fa-  
25 cility. Not more than one award or grants or serv-

1       ices may be made with respect to a single facility,  
2       but the grants or services may be renewed to facili-  
3       tate public participation at all stages of remedial ac-  
4       tion.”.

5       (c) Section 117 of the Act (42 U.S.C. 9617) is  
6       amended by adding after subsection (e) the following new  
7       subsections:

8       “(f) EARLY, DIRECT AND MEANINGFUL COMMUNITY  
9       INVOLVEMENT.—The President shall provide for early, di-  
10      rect and meaningful community involvement in each sig-  
11      nificant phase of response activities taken under this Act.  
12      The President shall provide the community with access to  
13      information necessary to develop meaningful comments on  
14      critical decisions regarding facility characterization, risks  
15      posed by the facility, and selection of removal and reme-  
16      dial actions. The President shall consider the views, pref-  
17      erences and recommendations of the affected community  
18      regarding all aspects of the response activities, including  
19      the acceptability to the community of achieving back-  
20      ground levels.

21      “(g) INFORMATION TO BE DISSEMINATED.—In addi-  
22      tion to other information the President considers appro-  
23      priate, the President shall ensure that the community is  
24      provided information on the following:

1           “(1) the availability of a Technical Assistance  
2       Grant (TAG) under subsection (e), directions on  
3       completing the TAG application, and the details of  
4       the application process;

5           “(2) the possibility (where relevant) that mem-  
6       bers of a community may qualify to receive an alter-  
7       native water supply or relocation assistance;

8           “(3) the Superfund process, and rights of pri-  
9       vate citizens and public interest or community  
10      groups;

11          “(4) the potential for or existence of a Commu-  
12      nity Working Group (CWG) established under sub-  
13      section (i) (as added by the Superfund Reform Act  
14      of 1994); and

15          “(5) an objective description of the facility’s lo-  
16      cation and characteristics, the contaminants present,  
17      the known exposure pathways, and the steps being  
18      taken to assess the risk presented by the facility.

19          “(h) PROCESS FOR INVOLVEMENT.—As early as  
20      practicable after site discovery, the President shall provide  
21      regular, direct, and meaningful community involvement in  
22      all phases of the response activities at the facility, includ-  
23      ing—

24           “(1) SITE ASSESSMENT.—Whenever practicable,  
25      during the site assessment, the President shall solicit

1 and evaluate the concerns and interests of the com-  
2 munity likely affected by the facility. The evaluation  
3 may consist of face-to-face community surveys, a  
4 minimum of one public meeting, written responses to  
5 significant concerns, and other appropriate  
6 participatory activities.

7 “(2) REMEDIAL INVESTIGATION/FEASIBILITY  
8 STUDY.—During the remedial investigation and fea-  
9 sibility study, the President shall solicit the views  
10 and preferences of the community on the remedi-  
11 ation and disposition of the hazardous substances,  
12 pollutants or contaminants at the site. The commu-  
13 nity’s views and preferences shall be described in the  
14 remedial investigation and feasibility study and con-  
15 sidered in the development of remedial alternatives  
16 for the facility.”.

17 **SEC. 103. COMMUNITY WORKING GROUPS.**

18 Section 117 of the Act (42 U.S.C. 9617) is amended  
19 by adding after subsection (h) (as added by this Act) the  
20 following new subsection:

21 “(i) COMMUNITY WORKING GROUPS.—

22 “(1) CREATION AND RESPONSIBILITIES.—The  
23 President shall provide the opportunity to establish  
24 a representative public forum, known as a Commu-  
25 nity Working Group (CWG), to achieve direct, regu-



1       lar and meaningful consultation with community  
2       members throughout all stages of a response action.  
3       The President shall consult with the CWG at each  
4       significant phase of the remedial process.

5           “(2) INFORMATION CLEARINGHOUSE.—The  
6       CWG shall serve as a facility information clearing-  
7       house for the community. In addition to maintaining  
8       records of facility status and lists of active citizen  
9       groups and available experts, the CWG shall also be  
10      a repository for health assessment information and  
11      other related health data.

12          “(3) LAND USE RECOMMENDATIONS.—To es-  
13      tablish land use expectations more reliably, and ob-  
14      tain greater community support for remedial deci-  
15      sions affecting future land use, the President shall  
16      consult with the CWG on a regular basis throughout  
17      the remedy selection process regarding reasonably  
18      anticipated future use of land at the facility. The  
19      CWG may offer recommendations to the President  
20      at any time during the response activities at the fa-  
21      cility on the reasonably anticipated future use of  
22      land at the facility, taking into account development  
23      possibilities and future waste management needs.  
24      The President shall not be bound by any rec-  
25      ommendation of the CWG. However, when the CWG

1 achieves substantial agreement on the reasonably  
2 anticipated future use of the land at the facility, the  
3 President shall give substantial weight to that rec-  
4 ommendation. In cases where there is substantive  
5 disagreement within the CWG over a recommenda-  
6 tion regarding the reasonably anticipated future use  
7 of land at the facility, the President shall seek to  
8 reconcile the differences. In the event of continued  
9 substantive disagreement, substantial weight shall be  
10 given to the views of the residents of the affected  
11 community. Should the President make a determina-  
12 tion that is inconsistent with a CWG recommenda-  
13 tion on the reasonably anticipated future use of land  
14 at the facility, the President shall issue a written  
15 reason for the inconsistency.

16 “(4) MEMBERS.—CWG membership shall not  
17 exceed twenty persons. CWG members shall serve  
18 without pay. Nominations for CWG membership  
19 shall be solicited and accepted by the President. Se-  
20 lection of CWG members shall be made by the Presi-  
21 dent. In selecting citizen participants for the CWG,  
22 the President shall provide notice and an oppor-  
23 tunity to participate in CWGs to persons who poten-  
24 tially are affected by facility contamination in the  
25 community. Special efforts shall be made to ensure

1       that the composition of CWGs reflects a balanced  
2       representation of all those interested in facility re-  
3       mediation. In general, it shall be appropriate for the  
4       President to offer members of the following groups  
5       representation on a CWG—

6               “(A) Residents and/or landowners who live  
7               on or have property immediately adjacent to or  
8               near the facility, or who may be directly af-  
9               fected by releases from the facility, with a mini-  
10              mum of one representative of the recipient a  
11              grant for technical assistance, if any, awarded  
12              under subsection (e);

13              “(B) Persons who, although not physically  
14              as close to the facility as those in the group  
15              identified in subparagraph (A), may be poten-  
16              tially affected by releases from the facility;

17              “(C) Members of the local medical commu-  
18              nity who have resided in the community for at  
19              least five years;

20              “(D) Representatives of Indian tribes;

21              “(E) Representatives of citizen, environ-  
22              mental or public interest groups with members  
23              residing in the community;

24              “(F) Local government officials;

1           “(G) Workers at the facility who will be in-  
2           volved in actual cleanup operations;

3           “(H) Persons at the facility during re-  
4           sponse actions;

5           “(I) Facility owners and the significant  
6           PRPs who, whenever practicable, represent a  
7           balance of interests; and,

8           “(J) Members of the local business com-  
9           munity.

10          “(5) OTHER COMMUNITY VIEWS.—The exist-  
11          ence of a CWG shall not affect or diminish any  
12          other obligation of the President to consider the  
13          views of any person in selecting response actions  
14          under this Act.”.

15       **SEC. 104. CITIZEN INFORMATION AND ACCESS OFFICES.**

16          Section 117 of the Act (42 U.S.C. 9617) is amended  
17          by adding after subsection (i) (as added by this Act) the  
18          following new subsection:

19          “(j) CITIZEN INFORMATION AND ACCESS OFFICES.—

20               “(1) CREATION AND RESPONSIBILITIES.—The  
21          Administrator shall ensure that an independent Citi-  
22          zen Information and Access Office (CIAO) is estab-  
23          lished in each state and on each tribal land affected  
24          by a National Priorities List facility.

1           “(2) PRIMARY FUNCTIONS.—The primary func-  
2       tions of each CIAO shall be to—

3           “(A) inform citizens and elected officials at  
4       all levels of government of the existence and  
5       status of National Priorities List facilities in  
6       the state;

7           “(B) provide citizens with information  
8       about each phase of the Superfund process, in-  
9       cluding the site identification, assessment and  
10      cleanup phases;

11          “(C) ensure wide distribution of informa-  
12      tion that is easily understood by citizens;

13          “(D) serve as a state-wide, or tribal land-  
14      wide clearinghouse of information; and

15          “(E) assist in the Administrator’s efforts  
16      to notify, nominate, and select potential Com-  
17      munity Working Group members.”.

18 **SEC. 105. RESPONSE TO COMMENTS.**

19       Section 117(a) (42 U.S.C. 9617(a)) of the Act is  
20      amended by striking “both of” from the phrase imme-  
21      diately preceding paragraph (1) and by inserting after  
22      paragraph (2) the following new paragraph:

23          “(3) Consider the recommendations of any  
24      Community Working Group, community members  
25      and Technical Assistance Grant recipients estab-

1 lished for the facility pursuant to this section. Pro-  
2 vide, in writing a response to each significant com-  
3 ment received during the public comment period.  
4 The written response shall include an explanation of  
5 how the lead agency has used or rejected significant  
6 comments of the Community Working Group in its  
7 final decision.”.

8 **SEC. 106. MULTIPLE SOURCES OF RISK DEMONSTRATION**  
9 **PROJECTS.**

10 Section 117 of the Act (42 U.S.C. 9617) is amended  
11 by adding after subsection (j) (as added by this Act) the  
12 following new subsection:

13 “(k) MULTIPLE SOURCES OF RISK DEMONSTRATION  
14 PROJECTS.—

15 “(1) IN GENERAL.—The Administrator shall se-  
16 lect at least 10 demonstration projects to be imple-  
17 mented over a five year period, relating to the iden-  
18 tification, assessment, management of, and response  
19 to, multiple sources of risk in and around designated  
20 facilities. These demonstration projects will examine  
21 various approaches to protect communities exposed  
22 to such multiple sources of risk. The Administrator  
23 shall promulgate regulations that set forth the cri-  
24 teria by which demonstration projects will be se-  
25 lected.

1           “(2) ADDITIONAL HEALTH BENEFITS.—In the  
2       course of conducting these demonstration projects, if  
3       a distinct pattern of adverse health effects is identi-  
4       fied in the surrounding community, the Adminis-  
5       trator shall consider the provision of additional  
6       health benefits to the affected community, in an ef-  
7       fort to improve community health and welfare. Addi-  
8       tional benefits may include services such as consulta-  
9       tions on health information and health screening,  
10      the kind and availability of which will be set forth  
11      in regulations promulgated by the Administrator.  
12      These benefits shall not duplicate any activities al-  
13      ready undertaken at those facilities by the Agency  
14      for Toxic Substances and Disease Registry under  
15      section 104(i) of this Act.

16           “(3) MULTIPLE SOURCES OF RISK.—For the  
17      purposes of this section, the term “multiple sources  
18      of risk” means—

19           “(A) health risks from the existence of and  
20      exposure to hazardous substances in the vicinity  
21      of a facility for which a response action under  
22      this Act is considered, which may present risks  
23      to persons who are also at risk due to condi-  
24      tions at such a facility; or

1           “(B) health risks from releases or threat-  
2           ened releases of a hazardous substance, pollut-  
3           ant or contaminant from facilities, permitted or  
4           otherwise, in the vicinity of a facility for which  
5           a response action under this Act is being con-  
6           sidered, which may present risks to persons who  
7           are also at risk due to the specific facility for  
8           which a response action is being considered.

9           “(4) CONSISTENCY WITH DESIGNATION OF  
10          EMPOWERMENT ZONES.—The Administrator shall,  
11          to the maximum extent practicable, select locations  
12          for conducting demonstration projects under this  
13          subsection that coincide with areas which have been  
14          identified as empowerment zones under the Omnibus  
15          Budget Reconciliation Act of 1994 (Public Law  
16          103–66).

17          “(5) RIGHT TO PETITION.—Any person may  
18          petition the Administrator to conduct a demonstra-  
19          tion project under this subsection at a specified loca-  
20          tion. Without regard to paragraph (4), the Adminis-  
21          trator may grant such a petition if—

22                 “(A) the petition sets out a reasonable  
23                 basis in fact that the population residing in the  
24                 vicinity of the specified location may be exposed



1 to multiple sources of risk as described in para-  
2 graph (3) and;

3 “(B) the petition otherwise meets the re-  
4 quirements of regulations promulgated by the  
5 Administrator which set forth the criteria by  
6 which demonstration projects will be selected.

7 “(6) REVIEWS OF PETITIONS.—The Adminis-  
8 trator’s determinations and reviews of petitions  
9 under this subsection are committed to the Adminis-  
10 trator’s unreviewable discretion.

11 “(7) INTERAGENCY COORDINATION.—The Ad-  
12 ministrator shall coordinate with other departments  
13 or agencies as necessary in carrying out the respon-  
14 sibilities of this subsection.”.

15 **SEC. 107. ASSESSING RISKS FROM MULTIPLE SOURCES.**

16 Section 105(a) of the Act (42 U.S.C. 9605(a)) is  
17 amended by adding after paragraph (10) the following  
18 new paragraph:

19 “(11) standards and procedures for assessing  
20 the risks, and the cumulative impact of such risks,  
21 posed by the release or threatened release of hazard-  
22 ous substances, or pollutants, or contaminants from  
23 multiple sources of risk (as described in section  
24 117(l)(3) of this Act) in and around a facility, for  
25 utilization in response actions authorized by this

1 Act. The demonstration projects authorized under  
2 subsection 117(l) of this Act shall be used to help  
3 meet the requirements of this subsection.”.

4 **SEC. 108. MULTIPLE SOURCES OF RISK IN PRIORITY SET-**  
5 **TING.**

6 Section 105(a)(8)(A) of the Act (42 U.S.C.  
7 9605(a)(8)(A)) is amended by adding in the last sentence  
8 before “and other appropriate factors” the following “the  
9 presence of multiple sources of risk (described in section  
10 117(l)(3) of this Act) to affected communities.”.

11 **SEC. 109. DISEASE REGISTRY AND MEDICAL CARE PROVID-**  
12 **ERS.**

13 Section 104(i)(1) of the Act (42 U.S.C. 9604(i)(1))  
14 is amended:

15 (a) by amending subparagraph (A) to read as  
16 follows:

17 “(A) in cooperation with the States, for sci-  
18 entific purposes and public health purposes, estab-  
19 lish and maintain a national registry of persons ex-  
20 posed to toxic substances;” and

21 (b) by amending subparagraph (E) by striking  
22 “admissions to hospitals and other facilities and  
23 services operated or provided by the Public Health  
24 Service” and by inserting “referral to accredited  
25 medical care providers”.

1 **SEC. 110. SUBSTANCE PROFILES.**

2 Section 104(i)(3) of the Act (42 U.S.C. 9604(i)(3))  
3 is amended by amending the paragraph beginning “Any  
4 toxicological profile or revision thereof” to read as follows:  
5 “Any toxicological profile or revision thereof shall reflect  
6 the Administrator of ATSDR’s assessment of all relevant  
7 toxicological testing which has been peer reviewed. The  
8 profiles prepared under this paragraph shall be for those  
9 substances highest on the list of priorities under para-  
10 graph (2) for which profiles have not previously been pre-  
11 pared or for substances not on the listing but which have  
12 been found at non-National Priorities List facilities and  
13 which have been determined by ATSDR to be of critical  
14 health concern. Profiles required under this paragraph  
15 shall be revised and republished as necessary, based on  
16 scientific need. Such profiles shall be provided to the  
17 States and made available to other interested parties.”.

18 **SEC. 111. DETERMINING HEALTH EFFECTS.**

19 Section 104(i)(5) of the Act (42 U.S.C. 9604(i)(5))  
20 is amended—

21 (a) in subparagraph (A) by—

22 (1) striking “designed to determine the  
23 health effects (and techniques for development  
24 of methods to determine such health effects) of  
25 such substance” and inserting “conducted di-  
26 rectly or by means such as cooperative agree-

1           ments and grants with appropriate public and  
2           nonprofit institutions. The research shall be de-  
3           signed to determine the health effects (and  
4           techniques for development of methods to deter-  
5           mine such health effects) of the substance”;  
6           and

7           (2) redesignating clause (iv) as “(v)”,  
8           striking “and” after clause (iii), and by insert-  
9           ing a new clause (iv) to read as follows:

10          “(iv) laboratory and other studies which can  
11          lead to the development of innovative techniques for  
12          predicting organ-specific, site-specific, and system-  
13          specific acute and chronic toxicity; and”;

14          (b) striking subparagraph (D).

15   **SEC. 112. PUBLIC HEALTH AND RELATED HEALTH ACTIVI-**  
16                   **TIES AT NPL FACILITIES.**

17          Section 104(i)(6) of the Act (42 U.S.C. 9604(i)(6))  
18   is amended by—

19          (a) amending subparagraph (A) to read as fol-  
20          lows:

21          “(A) The Administrator of ATSDR shall perform a  
22          public health assessment or related health activity for each  
23          facility on the National Priorities List established under  
24          section 105 of this Act. The public health assessment or  
25          related health activity shall be completed for each facility

1 proposed for inclusion on the National Priorities List not  
2 later than one year after the date of proposal for inclusion,  
3 including those facilities owned by any department, agen-  
4 cy, or instrumentality of the United States.”; and

5 (b) in subparagraph (H), striking “health as-  
6 sessment” and “such assessment” each place that  
7 they appear and inserting “public health assessment  
8 or related health activity”.

9 **SEC. 113. HEALTH STUDIES.**

10 Section 104(i)(7)(A) of the Act (42 U.S.C.  
11 9604(i)(7)(A)) is amended to read as follows:

12 “(A) Whenever in the judgment of the Administrator  
13 of ATSDR it is appropriate on the basis of the results  
14 of a public health assessment or on the basis of other ap-  
15 propriate information, the Administrator of ATSDR shall  
16 conduct a human health study of exposure or other health  
17 effects for selected groups or individuals in order to deter-  
18 mine the desirability of conducting full scale epidemiologic  
19 or other health studies of the entire exposed population.”.

20 **SEC. 114. DISTRIBUTION OF MATERIALS TO HEALTH PRO-**  
21 **FESSIONALS AND MEDICAL CENTERS.**

22 Section 104(i)(14) of the Act (42 U.S.C. 9604(i)(14))  
23 is amended to read as follows:

1       “(14) In implementing this subsection and other  
2 health-related provisions of this Act in cooperation with  
3 the States, the Administrator of ATSDR shall—

4               “(A) assemble, develop as necessary, and dis-  
5 tribute to the States, medical colleges, physicians,  
6 nursing institutions, nurses, and other health profes-  
7 sionals and medical centers, appropriate educational  
8 materials (including short courses) on the medical  
9 surveillance, screening, and methods of prevention,  
10 diagnosis and treatment of injury or disease related  
11 to exposure to hazardous substances (giving priority  
12 to those listed in paragraph (2)), through means the  
13 Administrator of ATSDR considers appropriate; and  
14               “(B) assemble, develop as necessary, and dis-  
15 tribute to the general public and to at-risk popu-  
16 lations appropriate educational materials and other  
17 information on human health effects of hazardous  
18 substances.”.

19 **SEC. 115. GRANT AWARDS/CONTRACTS/COMMUNITY ASSIST-**  
20 **ANCE ACTIVITIES.**

21       Section 104(i)(15) of the Act (42 U.S.C. 6904(i)(15))  
22 is amended by—

- 23               (a) inserting “(A)” before “The activities”;
- 24               (b) striking “cooperative agreements with  
25 States (or political subdivisions thereof)” and insert-

1       ing “grants, cooperative agreements, or contracts  
2       with States (or political subdivisions thereof), other  
3       appropriate public authorities, public or private in-  
4       stitutions, colleges, and universities, and professional  
5       associations,”;

6               (c) in the second sentence, inserting “public”  
7       before “health assessments”; and

8               (d) adding a new subparagraph as follows:

9       “(B) When a public health assessment or related  
10      health activity is conducted at a facility on, or a release  
11      being evaluated for inclusion on the National Priorities  
12      List, the Administrator of ATSDR may provide the assist-  
13      ance specified in this paragraph to public or private non-  
14      profit entities, individuals, and community-based groups  
15      who may be affected by the release or threatened release  
16      of hazardous substances in the environment.”.

17      **SEC. 116. PUBLIC HEALTH RECOMMENDATIONS IN REME-**  
18                              **DIAL ACTIONS.**

19       Section 121(c) of the Act (42 U.S.C. 9621(c)) is  
20      amended by inserting after the phrase “remedial action”  
21      the second time it appears the following: “, including pub-  
22      lic health recommendations and decisions resulting from  
23      activities under section 104(i),”.

1 **SEC. 117. ATSDR NOTIFICATION.**

2 Section 122 of the Act (42 U.S.C. 9622) is amended  
3 by inserting after subsection (m) the following new sub-  
4 section:

5 “(n) NOTIFICATION OF ATSDR.—When the Agency  
6 for Toxic Substances and Disease Registry (ATSDR) has  
7 conducted health related response activities pursuant to  
8 section 104(i) in response to a release or threatened re-  
9 lease of any hazardous substance that is the subject of  
10 negotiations under this section, the President shall notify  
11 ATSDR of the negotiations and shall encourage the par-  
12 ticipation of ATSDR in the negotiations.”.

13 **TITLE II—STATE ROLES**

14 **SEC. 201. STATE AUTHORITY.**

15 (a) Title I of the Act (42 U.S.C. 9600 et seq.) is  
16 amended by adding after section 126 the following new  
17 section:

18 **“SEC. 127. STATE AUTHORITY.**

19 “(a) STATE PROGRAM AUTHORIZATION.—

20 “(1) IN GENERAL.—At any time after the pro-  
21 mulgation of the criteria required by paragraph (3)  
22 of this subsection, a State may apply to the Admin-  
23 istrator to carry out, under its own legal authorities,  
24 response actions and enforcement activities at all fa-  
25 cilities listed or proposed for listing on the National  
26 Priorities List, or certain categories of facilities list-



1 ed or proposed for listing on the National Priorities  
2 List, within the State. This section shall not apply  
3 to any facility owned or operated by a department,  
4 agency, or instrumentality of the United States list-  
5 ed on the National Priorities List if, on the date of  
6 enactment of the Superfund Reform Act of 1994, an  
7 interagency agreement for such facility has been en-  
8 tered into pursuant to section 120(a)(2).

9 “(2) REQUIREMENTS FOR AUTHORIZATION.—If  
10 the Administrator determines that the State pos-  
11 sesses the legal authority, technical capability, and  
12 resources necessary to conduct response actions and  
13 enforcement activities in a manner that is substan-  
14 tially consistent with this Act and the National Con-  
15 tingency Plan at the facilities listed or proposed for  
16 listing on the National Priorities List for which it  
17 seeks authorization, the Administrator, pursuant to  
18 a contract or agreement entered into between the  
19 Administrator and the State, may authorize the  
20 State to assume the responsibilities established  
21 under this Act at all such facilities or categories of  
22 facilities. Except as otherwise provided in this Act,  
23 such responsibilities include, but are not limited to,  
24 responding to a release or threatened release of a  
25 hazardous substance or pollutant or contaminant;

1 selecting response actions; expending the Fund in  
2 amounts authorized by the Administrator to finance  
3 response activities; and taking enforcement actions,  
4 including cost recovery actions to recover Fund ex-  
5 penditures made by the State. In an application for  
6 authorization, a State shall acknowledge its respon-  
7 sibility to address all response actions at the facili-  
8 ties for which it seeks authorization.

9 “(3) PROMULGATION OF REGULATIONS.—The  
10 Administrator shall issue regulations to determine a  
11 State’s eligibility for authorization and establish a  
12 process and criteria for withdrawal of such an au-  
13 thorization. At a minimum, a State must dem-  
14 onstrate—

15 “(A) that it has a process for allocating li-  
16 ability among potentially responsible parties  
17 that is substantially consistent with section  
18 122a of this Act (as added by the Superfund  
19 Reform Act of 1994);

20 “(B) that it provides for public participa-  
21 tion in a manner that is substantially consistent  
22 with section 117 of this Act and the National  
23 Contingency Plan;

24 “(C) that it provides for selection and con-  
25 duct of response actions in a manner that is

1 substantially consistent with section 121 of this  
2 Act; and

3 “(D) that it provides for notification of  
4 and coordination with trustees in a manner that  
5 is substantially consistent with section  
6 104(b)(2) and section 122(j)(1) of this Act.

7 “(b) REFERRAL OF RESPONSIBILITIES.—

8 “(1) IN GENERAL.—At any time after the pro-  
9 mulgation of the criteria required by paragraph (3)  
10 of this subsection, a State may apply to the Admin-  
11 istrator to carry out, under its own legal authorities,  
12 response actions at a specific facility or facilities list-  
13 ed or proposed for listing on the National Priorities  
14 List, within the State.

15 “(2) REQUIREMENTS FOR REFERRAL.—If the  
16 Administrator determines that the State possesses  
17 the legal authority, technical capability, and re-  
18 sources necessary to conduct response actions and  
19 enforcement activities in a manner substantially con-  
20 sistent with this Act and the National Contingency  
21 Plan at the facilities listed or proposed for listing on  
22 the National Priorities List facilities for which it  
23 seeks referral, the Administrator, pursuant to a con-  
24 tract or agreement entered into between the Admin-  
25 istrator and the State, may refer the responsibilities

1 established under this Act to the State for the facili-  
2 ties for which the State seeks referral. Except as  
3 otherwise provided in this Act, such responsibilities  
4 include, but are not limited to, responding to a re-  
5 lease or threatened release of a hazardous substance  
6 or pollutant or contaminant; selecting response ac-  
7 tions; expending the Fund in amounts authorized by  
8 the Administrator to finance response activities; and  
9 taking enforcement actions, including cost recovery  
10 actions to recover Fund expenditures made by the  
11 State.

12 “(3) PROMULGATION OF REGULATIONS.—The  
13 Administrator shall promulgate regulations to deter-  
14 mine a State’s eligibility for referral and establish a  
15 process and criteria for withdrawal of such referral.  
16 At a minimum, a State must demonstrate that it  
17 meets the requirements described in subsection  
18 (a)(3).

19 “(c) AUTHORIZED USE OF FUND.—At facilities listed  
20 on the National Priorities List for which a State is author-  
21 ized under subsection (a), and at facilities listed on the  
22 National Priorities List which are referred to a State  
23 under subsection (b), the State shall be eligible for re-  
24 sponse action financing from the Fund. The Administrator  
25 shall ensure that all allocations of the Fund to the States

1 for the purpose of undertaking site-specific response ac-  
2 tions are based primarily on the relative risks to human  
3 health and the environment posed by the facilities eligible  
4 for funding. The amount of Fund financing for a State-  
5 selected response action at a facility listed on the National  
6 Priorities List shall—

7           “(1) take into account the number and financial  
8           viability of parties identified as potentially liable for  
9           response costs at such facility, and

10           “(2) be limited to the amount necessary to  
11           achieve a level of response that is not more stringent  
12           than that required under this Act.

13 A State also may obtain Fund financing to develop and  
14 enhance its capacity to undertake response actions and en-  
15 forcement activities. The Administrator shall establish  
16 specific criteria for allocating expenditures from the Fund  
17 among States for the purposes of undertaking response  
18 actions and enforcement activities at referred and State-  
19 authorized facilities, and building state capacities to un-  
20 dertake such response actions and enforcement activities.  
21 The Administrator shall develop a program and provide  
22 an appropriate level of Fund financing to assist Indian  
23 tribes in developing and enhancing their capabilities to  
24 conduct response actions and enforcement activities.

1       “(d) STATE COST SHARE.—As provided in section  
2 104(c)(3)(B) of this Act (as added by the Superfund Re-  
3 form Act of 1994), a State shall pay or assure payment  
4 of 15 percent of the costs of all response actions and pro-  
5 gram support or other costs for which the State receives  
6 funds from the Fund under this section. An Indian tribe  
7 authorized to conduct a response actions and enforcement  
8 activities or to which facilities have been referred under  
9 this section is not subject to the cost-share requirement  
10 of this subsection.

11       “(e) TERMS AND CONDITIONS; COST RECOVERY.—A  
12 contract or agreement for a State authorization or referral  
13 under this section is subject to such terms and conditions  
14 as the Administrator prescribes. The terms and conditions  
15 shall include requirements for periodic auditing and re-  
16 porting of State expenditures from the Fund. The contract  
17 or agreement may cover a specific facility, a category of  
18 facilities, or all facilities listed or proposed to be listed on  
19 the National Priorities List in the State. The contract or  
20 agreement shall require the State to seek cost recovery,  
21 as contemplated by this Act, of all expenditures from the  
22 Fund. Five percent of the monies recovered by the State  
23 may be retained by the State for use in its hazardous sub-  
24 stance response program, and the remainder shall be re-  
25 turned to the Fund. Before making further allocations

1 from the Fund to any State, the Administrator shall take  
2 into consideration the effectiveness of the State's enforce-  
3 ment program and cost recovery efforts.

4 “(f) ENFORCEMENT OF AGREEMENTS.—If the Ad-  
5 ministrator enters into a contract or agreement with a  
6 State pursuant to this section, and the State fails to com-  
7 ply with any terms and conditions of the contract or agree-  
8 ment, the Administrator, after providing sixty days notice,  
9 may withdraw the State authorization or referral, or seek  
10 in the appropriate Federal district court to enforce the  
11 contract or agreement to recover any funds advanced or  
12 any costs incurred because of the breach of the contract  
13 or agreement by the State.

14 “(g) MORE STRINGENT STATE STANDARDS.—Under  
15 either an authorization or referral, a State may select a  
16 response action that achieves a level of cleanup that is  
17 more stringent than required under section 121(d) of this  
18 Act if the State agrees to pay for the incremental increase  
19 in response cost attributable to achieving the more strin-  
20 gent cleanup level. Neither the Fund nor any party liable  
21 for response costs shall incur costs in excess of those nec-  
22 essary to achieve a level of cleanup required under section  
23 121(d) of this Act.

24 “(h) OPPORTUNITY FOR PUBLIC COMMENT.—The Ad-  
25 ministrator shall make available, for public review and

1 comment, applications for authorization under subsection  
2 (a) and applications for referral under subsection (b). The  
3 Administrator shall not approve or withdraw authorization  
4 or referral from a State unless the Administrator notifies  
5 the State, and makes public, in writing, the reasons for  
6 such approval or withdrawal.

7 “(i) PERIODIC REVIEW OF AUTHORIZED STATE PRO-  
8 GRAMS AND REFERRALS.—The Administrator shall con-  
9 duct a periodic review of authorized State programs and  
10 referrals to determine, among other things, whether—

11 “(1) the response actions were selected and con-  
12 ducted in a manner that was substantially consistent  
13 with this Act, the National Contingency Plan, and  
14 the contract or agreement between the Adminis-  
15 trator and the State;

16 “(2) the State response costs financed by Fund  
17 expenditures were incurred in the manner agreed to  
18 by the State, in accordance with the contract or  
19 agreement between the Administrator and the State;  
20 and

21 “(3) the State’s cost recovery efforts and other  
22 enforcement efforts were conducted in accordance  
23 with the contract or agreement between the Admin-  
24 istrator and the State.



1 The Administrator, in consultation with the States, shall  
2 develop specific criteria for periodic reviews of authorized  
3 State programs and referrals. The Administrator shall es-  
4 tablish a mechanism to make the periodic State reviews  
5 available to the public.

6 “(j) MODIFICATION OF RESPONSE.—At a facility for  
7 which a State selects a response action under an author-  
8 ization or a referral, the State shall afford the opportunity  
9 for public participation in a manner that is substantially  
10 consistent with the requirements of section 117(f)–(i) of  
11 this Act, and shall give notice of and a copy of the pro-  
12 posed plan for response action to the Administrator. The  
13 State also shall give prompt written notice and a copy of  
14 the final decision in selecting the response action to the  
15 Administrator. Within 90 days from the date of receipt  
16 of such notice and final response action decision from the  
17 State, the Administrator may issue a notice of a request  
18 to modify the State-selected remedy. The Administrator’s  
19 notice shall be in writing and shall set forth the basis for  
20 the Administrator’s position, and the final date for re-  
21 sponding to the Administrator’s request, which shall be  
22 no less than 90 days from the date of the notice. If the  
23 State’s response does not resolve the Administrator’s con-  
24 cerns to the Administrator’s satisfaction, the Adminis-  
25 trator may withhold the distribution of Fund monies for

1 the selected response action or may withdraw all or part  
2 of the State's authorization or referral.

3       “(k) EFFECT OF SECTION.—The President shall re-  
4 tain the authority to take response actions at facilities list-  
5 ed or proposed for listing on the National Priorities List  
6 that are not being addressed by a State under an author-  
7 ization or referral pursuant to this section. At facilities  
8 listed or proposed for listing on the National Priorities  
9 List that are being addressed by a State under either an  
10 authorization or a referral, the President may take re-  
11 sponse actions that the President determines necessary to  
12 protect human health or the environment, if the State  
13 fails, after a request by the Administrator to take such  
14 response actions in a timely manner. A State does not  
15 have the authority, except pursuant to this section, to take  
16 or order a response action, or any other action relating  
17 to releases or threatened releases, at any facility listed or  
18 proposed for listing on the National Priorities List. This  
19 section does not affect the authority of the United States  
20 under this Act to seek cost recovery for costs incurred by  
21 the United States.”.

22       (b) TRANSITION AND CONFORMING AMENDMENTS.—

23               (1) Sections 104(c)(5), 104(c)(7), 104(d)(1)  
24 and 104(d)(2) of the Act are each amended by in-  
25 serting after the heading in each paragraph the fol-

1       lowing—“This paragraph applies only to response  
2       actions for which a Record of Decision or other deci-  
3       sion document is signed before the date of enact-  
4       ment of the Superfund Reform Act of 1994 and re-  
5       sponse actions covered by a contract or agreement  
6       for which a State has selected, pursuant to the op-  
7       tion provided in subsection (c)(3)(C) (as added by  
8       the Superfund Reform Act of 1994), the funding re-  
9       quirements set forth in subsection (c)(3)(A) (as  
10      amended by Superfund Reform Act of 1994).”;

11           (2) Section 114(a) of the Act is amended by  
12      striking “Nothing” and inserting “Except as other-  
13      wise provided in this Act, nothing”;

14           (3) Section 121(f)(1) of the Act is amended by  
15      striking the existing provisions and inserting “The  
16      President may repeal, no earlier than one year after  
17      the promulgation of final regulations under sections  
18      127(a)(3) and 127(b)(3), the regulations issued  
19      under this paragraph prior to the date of enactment  
20      of the Superfund Reform Act of 1994.”;

21           (4) Section 121(f)(2) of the Act is amended  
22      by—

23                   (A) striking “legally applicable or relevant  
24                   and appropriate” from the second sentence of  
25                   subparagraph (A); and

1 (B) striking “subsection (d)(4)” from the  
2 second sentence of subparagraph (A) and in-  
3 serting “subsection (d)(5)(C)”;

4 (5) Section 121(f)(3) of the Act is amended  
5 by—

6 (A) striking “legally applicable or relevant  
7 and appropriate” from the second sentence of  
8 subparagraph (A); and

9 (B) striking “subsection (d)(4)” from the  
10 second sentence of subparagraph (A) and in-  
11 serting “subsection (d)(5)(C)”;

12 (6) Section 302(d) of the Act is amended by  
13 striking “Nothing” and inserting “Except as other-  
14 wise provided in this Act, nothing”.

15 **SEC. 202. TRANSFER OF AUTHORITIES.**

16 Section 120(g) of the Act (42 U.S.C. 9620(g)) is  
17 amended by adding, after “the Environmental Protection  
18 Agency,” the phrase “and except as provided in section  
19 127,”.

20 **SEC. 203. STATE ROLE IN DETERMINATION OF REMEDIAL**  
21 **ACTION TAKEN.**

22 Section 120(h)(3) of the Act (42 U.S.C. 9620(h)(3))  
23 is amended by adding at the end thereof the following:  
24 “If the property being transferred is part of a facility sub-  
25 ject to a State authorization or a referral under section

1 127, all demonstrations required by this paragraph to be  
2 made to the Administrator shall be made to the appro-  
3 priate State official.”.

4 **SEC. 204. STATE ASSURANCES.**

5 Section 104(c)(3) of the Act (42 U.S.C. 9604(c)(3))  
6 is amended by—

7 (a) in the beginning of the paragraph after  
8 “(3)” inserting “State cost shares for response ac-  
9 tions and programs for which Superfund funds may  
10 be allocated under this section or section 127 shall  
11 be as follows—”;

12 (b) striking “The” before “President” and in-  
13 serting “(A) For all remedial actions for which a  
14 Record of Decision is signed before the date of en-  
15 actment of the Superfund Reform Act of 1994, the”;

16 (c) redesignating subparagraphs (A), (B) and  
17 (C) of existing section 104(c)(3) as subparagraphs  
18 (1), (2) and (3) respectively; by striking “(i)”, wher-  
19 ever it appears and inserting “(I)”; and striking  
20 “(ii)” wherever it appears and inserting “(II)”;

21 (d) adding a new subparagraph (B) as fol-  
22 lows—

23 “(B) Subject to the provisions of subparagraph (C),  
24 for the costs of all response actions for which a Record  
25 of Decision or other decision document is signed after the

1 date that is one year after the effective date of final regu-  
2 lations promulgated under section 127(a)(3) and section  
3 127(b)(3), and for all program or other costs for which  
4 Fund money may be allocated to the State pursuant to  
5 this section or section 127, the President shall not provide  
6 or authorize funding from the Fund unless the State first  
7 enters into a contract or agreement with the President  
8 providing assurances deemed adequate by the President  
9 that the State will pay or assure payment of 15 percentum  
10 of all such costs as required by section 127(d). The Ad-  
11 ministrator may provide funding authorized under this  
12 paragraph for a one-year or other period for all costs and  
13 facilities in a State; in that event, the State cost share  
14 requirement set forth above shall apply to all costs covered  
15 by such period.”; and

16 (e) adding a new subparagraph (C) as follows:

17 “(C) Each State shall have the option of receiving  
18 funding for all response action costs and program or other  
19 costs for which funding is authorized under this section  
20 or section 127 pursuant to either subparagraph (A) or  
21 subparagraph (B) of this paragraph. The option selected  
22 by the State shall apply to all contracts and agreements  
23 signed pursuant to this section or section 127.”.

1 **SEC. 205. SITING.**

2 Section 104(c)(9) of the Act (42 U.S.C. 9604(c)(9))  
3 is amended to read as follows:

4 “(9) SITING.—Effective one year after the date of en-  
5 actment of the Superfund Reform Act of 1994, the Presi-  
6 dent shall not provide any remedial actions pursuant to  
7 this section unless the State in which the release occurs  
8 submits a report describing its plans for adequate disposal  
9 capacity for hazardous wastes, in accordance with guide-  
10 lines issued by the Administrator.”.

11 **SEC. 206. THE NATIONAL PRIORITIES LIST.**

12 (a) Section 105(a)(8)(B) of the Act (42 U.S.C.  
13 9605(a)(8)(B)) is amended by striking “as part of the  
14 plan”, and by inserting before “Within” the sentence  
15 “The National Priorities List, and any modifications to  
16 the National Priorities List, may be adopted administra-  
17 tively, and without rulemaking.”.

18 (b) Section 105(a)(8) of the Act (42 U.S.C.  
19 9605(a)(8)) is amended by adding after subparagraph (B)  
20 the following new subparagraph:

21 “(C) before determining that a facility is to be  
22 listed on the National Priorities List, the Adminis-  
23 trator shall publish a notice proposing the facility  
24 for listing on the National Priorities List and shall  
25 provide an opportunity for public comment. Public  
26 notice and opportunity for comment also shall be

1 provided before a decision by the Administrator to  
2 remove a facility from the National Priorities List.  
3 The Administrator shall establish a procedure under  
4 which any person may request that a facility be con-  
5 sidered for listing on, or removal from, the National  
6 Priorities List. The Administrator has the sole dis-  
7 cretion to list or remove a facility on the National  
8 Priorities List.”.

9 **SEC. 207. THE STATE REGISTRY.**

10 Section 105(a)(8) of the Act (42 U.S.C. 9605(a)(8))  
11 is amended by adding after subparagraph (C) (as added  
12 by this Act) a new subparagraph—

13 “(D) STATE REGISTRY.—Each State shall  
14 maintain and make available to the public a list of  
15 facilities in the State that are believed to present a  
16 current or potential hazard to human health or the  
17 environment due to the release or threatened release  
18 of hazardous substances or pollutants or contami-  
19 nants. Each State, in consultation with the Adminis-  
20 trator and other appropriate federal agencies, shall  
21 prepare such listing, and shall, on an annual basis,  
22 publish the State Registry, specifying the govern-  
23 mental agency addressing the facility, and whether  
24 the facility is on the National Priorities List.”.



1       **TITLE III—VOLUNTARY RESPONSE**

2       **SEC. 301. PURPOSES AND OBJECTIVES.**

3       The purposes and objectives of this title are to—

4           (a) significantly increase the pace of response  
5       activities at contaminated sites by promoting and  
6       encouraging the development and expansion of State  
7       voluntary response programs, and

8           (b) benefit the public welfare by returning con-  
9       taminated sites to economically productive uses.

10      **SEC. 302. STATE VOLUNTARY RESPONSE PROGRAM.**

11      Title I of the Act is amended by adding after section  
12   127 (as added by this Act) the following new section:

13      **“SEC. 128. VOLUNTARY RESPONSE PROGRAM.**

14      “(a) IN GENERAL.—The Administrator shall estab-  
15   lish a program to provide technical and other assistance  
16   to the States to establish and expand voluntary response  
17   programs.

18      “(b) VOLUNTARY RESPONSE PROGRAM.—The Ad-  
19   ministrator shall assist States to establish and administer  
20   a voluntary program that—

21           “(1) covers all eligible facilities, as defined in  
22       subsection (c) of this section, within the State;

23           “(2) provides adequate opportunities for public  
24       participation, including prior notice and opportunity  
25       for comment, in selecting response actions;

1           “(3) provides opportunities for technical assist-  
2           ance for voluntary response actions;

3           “(4) has the capability, through enforcement or  
4           other mechanisms, of assuming the responsibility for  
5           completing a response action if the current owner or  
6           prospective purchaser fails or refuses to complete the  
7           necessary response, including operation and mainte-  
8           nance; and

9           “(5) provides adequate oversight and has ade-  
10          quate enforcement authorities to ensure that vol-  
11          untary response actions are completed in accordance  
12          with applicable Federal and State laws, including  
13          applicable permit requirements and any on-going op-  
14          eration and maintenance or long-term monitoring  
15          activities.

16          “(c) ELIGIBLE FACILITIES.—

17               “(1) Except as provided in paragraph 2 of this  
18               subsection, the term ‘eligible facility’ means a facil-  
19               ity or portion of a facility where there has been a  
20               release or threat of release of a hazardous sub-  
21               stance, pollutant, or contaminant into the environ-  
22               ment.

23               “(2) The term ‘eligible facility’ does not include  
24               any of the following—

1           “(A) a facility at which a remedial inves-  
2           tigation and feasibility study is underway, un-  
3           less the Administrator, in consultation with the  
4           State, determines that it is appropriate to allow  
5           the response action at such a facility to proceed  
6           under a voluntary response program;

7           “(B) a facility with respect to which a  
8           Record of Decision has been issued under sec-  
9           tion 104 of this Act;

10          “(C) a facility with respect to which a cor-  
11          rective action permit condition or order has  
12          been proposed, issued, modified, or amended to  
13          require implementation of specific corrective  
14          measures under section 3004(u), 3004(v), or  
15          3008(h) of the Solid Waste Disposal Act (42  
16          U.S.C. 6924(u), 6924(v), or 6928(h)):

17          “(D) a land disposal unit with respect to  
18          which a closure notification under subtitle C of  
19          the Solid Waste Disposal Act (42 U.S.C. 6921  
20          et seq.) has been submitted;

21          “(E) a facility with respect to which an ad-  
22          ministrative or judicial order or decree concern-  
23          ing the response action has been issued, sought,  
24          or entered into by the United States under this  
25          Act, the Solid Waste Disposal Act (42 U.S.C.

1           6901 et seq.), the Atomic Energy Act of 1954  
2           (42 U.S.C. 2011 et seq.), the Federal Water  
3           Pollution Control Act (33 U.S.C. 1251 et seq.),  
4           the Toxic Substances Control Act (15 U.S.C.  
5           2601 et seq.) or title XIV of the Public Health  
6           Service Act, commonly known as the Safe  
7           Drinking Water Act (42 U.S.C. 300(f) et seq.);  
8           and

9           “(F) a facility at which assistance for re-  
10          sponse activities may be obtained under subtitle  
11          I of the Solid Waste Disposal Act (42 U.S.C.  
12          6991 et seq.) from the Leaking Underground  
13          Storage Tank Trust Fund established under  
14          section 9508 of the Internal Revenue Code of  
15          1986.

16          “(3) A facility listed or proposed for listing on  
17          the National Priorities List may be an “eligible facil-  
18          ity” if—

19               “(A) the facility is not a facility identified  
20               in paragraph (2);

21               “(B) the State in which the facility is lo-  
22               cated has obtained a State authorization or re-  
23               ferral under section 127 of this Act; and

1           “(C) the Administrator concurs in the  
2           State’s determination to address the facility  
3           under its voluntary response program.

4           “(d) ANNUAL REPORTING.—The Administrator shall  
5           report, not later than 1 year after enactment of this Act  
6           and annually thereafter, to the Congress on the status of  
7           State voluntary response programs including—

8           “(1) whether the State’s voluntary response  
9           program continues to meet the criteria set forth in  
10          subsection (b) or (c);

11          “(2) whether the State has adopted procedures  
12          to ensure that all response actions completed or un-  
13          dertaken under the State’s voluntary response pro-  
14          gram comply with all applicable Federal and State  
15          laws;

16          “(3) whether public participation opportunities  
17          have been adequate during the process of selecting  
18          a response action for each voluntary response;

19          “(4) whether voluntary response actions com-  
20          pleted or undertaken under the State voluntary re-  
21          sponse program have been implemented in a manner  
22          that has reduced or eliminated risks to human  
23          health and the environment to the satisfaction of the  
24          State;

1           “(5) whether voluntary response actions com-  
2       pleted or undertaken under the State voluntary re-  
3       sponse program at facilities listed or proposed for  
4       listing on the National Priorities List were con-  
5       ducted in accordance with section 121(d) of this Act;  
6       and

7           “(6) whether a voluntary response action has  
8       increased risk to human health or the environment,  
9       and whether a State has taken timely and appro-  
10      priate steps to reduce or eliminate that risk to  
11      human health or the environment.

12       “(e) STATUTORY CONSTRUCTION.—This section is  
13      not intended—

14           “(1) to impose any requirement on a State vol-  
15      untary response program existing on or after the  
16      date of enactment of this Act; or

17           “(2) to affect the liability of any person or re-  
18      sponse authorities afforded under any law (including  
19      any regulation) relating to environmental contamina-  
20      tion, including this Act (except as expressly provided  
21      in section 101(39)(D) (42 U.S.C. 9601(39)(D)), sec-  
22      tion 107(a)(5)(C) (42 U.S.C. 9607(a)(5)(C)), the  
23      Solid Waste Disposal Act (42 U.S.C. 6901 et. seq.),  
24      the Federal Water Pollution Control Act (33 U.S.C.  
25      1251 et. seq.), the Toxic Substances Control Act (15

1 U.S.C. 2601 et. seq.), or title XIV of the Public  
2 Health Service Act, commonly known as the “Safe  
3 Drinking Water Act” (42 U.S.C. 300(f) et. seq.).”.

4 **SEC. 303. SITE CHARACTERIZATION PROGRAM.**

5 Title I of the Act is amended by adding after section  
6 128 (as added by this Act) the following new section:

7 **“SEC. 129 SITE CHARACTERIZATION TECHNICAL ASSIST-**  
8 **ANCE PROGRAM**

9 “(a) IN GENERAL.—The Administrator shall estab-  
10 lish a program to provide technical and other assistance  
11 to municipalities to conduct site characterizations for fa-  
12 cilities at which voluntary response actions are being con-  
13 ducted or are proposed to be conducted pursuant to a  
14 State voluntary response program that meets the require-  
15 ments described in section 127.

16 “(b) TECHNICAL ASSISTANCE.—In carrying out the  
17 program established under subsection (a), the Adminis-  
18 trator may provide technical and other assistance to a mu-  
19 nicipality to conduct a site characterization of a facility  
20 within the jurisdiction of the municipality at which vol-  
21 untary response actions are being conducted or are pro-  
22 posed to be conducted. A municipality requesting technical  
23 and other assistance shall provide to the Administrator the  
24 following information—

1           “(1) describing the facility at which voluntary  
2       response actions are being conducted or are pro-  
3       posed to be conducted;

4           “(2) demonstrating the financial need of the  
5       owner or prospective purchaser of such a facility for  
6       funds to conduct a site characterization;

7           “(3) analyzing the potential of the facility for  
8       creating new businesses and employment opportuni-  
9       ties on completion of the response action;

10          “(4) estimating the fair market value of the site  
11       after the proposed or ongoing response action, if a  
12       response action is necessary;

13          “(5) regarding the economic viability and com-  
14       mercial activity on real property—

15               “(A) located within the immediate vicinity  
16               of the affected site at the time of consideration  
17               of the application; or

18               “(B) projected to be located within the im-  
19               mediate vicinity of the affected site by the date  
20               that is 5 years after the date of the consider-  
21               ation of the application;

22          “(6) regarding the potential of the facility for  
23       creating new businesses and employment opportuni-  
24       ties on completion of a response action;



1           “(7) regarding whether the affected site is lo-  
2 cated in an economically distressed community;

3           “(8) regarding the presence of multiple sources  
4 of risk as described in section 117(k) of this Act;  
5 and

6           “(9) in such form, as the Administrator consid-  
7 ers appropriate to carry out the purposes of this sec-  
8 tion.”.

## 9       **TITLE IV—LIABILITY AND ALLOCATION**

### 10   **SEC. 401. RESPONSE AUTHORITIES.**

11       (a) Section 104(e)(2) of the Act (42 U.S.C.  
12 9604(e)(2)) is amended by deleting the word “cleanup”  
13 and inserting the phrase “response action”, and inserting  
14 after subparagraph (C) the following:

15           “(D) The nature and extent of all activities  
16 and operations at such vessel or facility, includ-  
17 ing the identity of any persons engaged in, re-  
18 sponsible for, controlling, or having the ability  
19 to control such activities or operations.

20           “(E) Information relating to the liability or  
21 responsibility of any person to perform or pay  
22 for a response action.

23           “(F) Information that is otherwise relevant  
24 to enforce the provisions of this Act.”.

1       (b) Section 104(e)(7) of the Act (42 U.S.C. 9604(e))  
2 is amended to read as follows:

3           “(7) ADMINISTRATIVE SUBPOENAS.—When it  
4 would assist in the collection of information nec-  
5 essary or appropriate for the purposes of implement-  
6 ing this Act, the President may by subpoena require  
7 the attendance and testimony of witnesses and the  
8 production of reports, papers, documents, answers to  
9 questions, and other information that the President  
10 deems necessary. Witnesses shall be paid the same  
11 fees and mileage that are paid witnesses in the  
12 courts of the United States. In the event of contu-  
13 macy or failure or refusal of any person to obey any  
14 such subpoena, any district court of the United  
15 States in which venue is proper shall have jurisdic-  
16 tion to order any such person to comply with such  
17 subpoena. Any failure to obey such an order of the  
18 court is punishable by the court as a contempt  
19 thereof.

20           “(8) CONFIDENTIALITY OF INFORMATION.—

21           “(A) Any records, reports, or information  
22 obtained from any person under this section  
23 (including records, reports or information ob-  
24 tained by representatives of the President and  
25 records, reports or information obtained pursu-

1 ant to a contract, grant or other agreement to  
2 perform work pursuant to this section, but not  
3 including documents, reports, compilations,  
4 summaries, or other analyses prepared by the  
5 President or representatives of the President  
6 which reference or incorporate information ob-  
7 tained under this section) shall be available to  
8 the public, except as follows:

9 “(i) Upon a showing satisfactory to  
10 the President (or the State, as the case  
11 may be) by any person that records, re-  
12 ports or information, or any particular  
13 part thereof (other than health or safety  
14 effects data), to which the President (or  
15 the State, as the case may be) or any offi-  
16 cer, employee, or representative has access  
17 under this section if made public would di-  
18 vulge information entitled to protection  
19 under section 1905 of title 18 of the Unit-  
20 ed States Code, such information or par-  
21 ticular portion thereof shall be considered  
22 confidential in accordance with the pur-  
23 poses of that section, except that such  
24 record, report, document or information  
25 may be disclosed to other officers, employ-

1           ees, or authorized representatives of the  
2           United States (including government con-  
3           tractors) concerned with carrying out this  
4           chapter, or when relevant in any proceed-  
5           ing under this chapter, or, if such records,  
6           reports or information are obtained or sub-  
7           mitted to the United States (or the State,  
8           as the case may be) pursuant to a con-  
9           tract, grant or other agreement to perform  
10          work pursuant to this section, to persons  
11          from whom the President seeks to recover  
12          costs pursuant to this Act.

13               “(ii) This section does not require  
14               that information which is exempt from dis-  
15               closure pursuant to section 522(a) of title  
16               5 of the United States Code by reason of  
17               subsection (b)(5), subsection (b)(6), or  
18               subsection (b)(7) of such section, be avail-  
19               able to the public, nor shall the disclosure  
20               of any such information pursuant to this  
21               section authorize disclosure to other par-  
22               ties or be deemed to waive any confiden-  
23               tiality privilege available to the President  
24               under any federal or State law.”.

1 **SEC. 402. COMPLIANCE WITH ADMINISTRATIVE ORDERS.—**

2 (a) Section 106(a) of the Act (42 U.S.C. 9606(a))  
3 is amended by—

4 (1) inserting after the phrase “hazardous sub-  
5 stance” the phrase “, or pollutant or contaminant”;  
6 and

7 (2) by adding at the end thereof the following:  
8 “The President may amend such orders and issue  
9 additional orders, as appropriate, without a subse-  
10 quent finding of an imminent and substantial  
11 endangerment, to complete response action under-  
12 taken in response to a release or substantial threat  
13 of a release, or to require additional response actions  
14 that are necessary or appropriate.”.

15 (b) Section 106(b)(1) of the Act (42 U.S.C.  
16 9606(b)(1)) is amended

17 (1) by striking out the phrase “to enforce such  
18 order”, and

19 (2) by inserting before the period “, or be re-  
20 quired to comply with such order, or both, even if  
21 another party has complied, or is complying, with  
22 the terms of the same order or another order per-  
23 taining to the same facility, release or threatened re-  
24 lease”; and

1           (3) by inserting at the end of the paragraph the  
2           following “For purposes of this title, a ‘sufficient  
3           cause’ requires—

4                   “(A) an objectively reasonable belief by the  
5           person to whom the order is issued that the  
6           person is not liable for any response costs under  
7           section 107 of this title; or

8                   “(B) that the action to be performed pur-  
9           suant to the order is determined to be inconsis-  
10          tent with the national contingency plan.

11          The existence or results of an allocation process pur-  
12          suant to section 122a of this title shall not affect or  
13          constitute a basis for a determination of ‘sufficient  
14          cause.’”.

15          (c) Section 106(b)(2) is amended by moving the sec-  
16          ond sentence of subsection (b)(2)(A) and redesignating it  
17          as subsection (b)(4), and by striking the word “para-  
18          graph” in such newly designated subsection (b)(4) and re-  
19          placing it with the word “subsection”.

20          (d) Section 106(b)(2)(A) of the Act (42 U.S.C.  
21          9602(b)(2)(A) is amended by striking out the phrase  
22          “completion of ”, and inserting the phrase “the President  
23          determines that such person has completed”.

24          (e) Section 106(b)(2)(C) of the Act (42 U.S.C.  
25          9606(b)(2)(C)) is amended by inserting after the words

1 “Subparagraph (D)” the phrase”, or as may be authorized  
 2 in a settlement entered into under section 122a of this  
 3 title.”.

4 **SEC. 403. LIMITATIONS TO LIABILITY FOR RESPONSE**  
 5 **COSTS.**

6 Section 107 of the Act (42 U.S.C. 9607), is amended  
 7 (a) in subsection (a) by inserting:

8 “(5) Notwithstanding paragraphs (1) through  
 9 (4) of this subsection, a person who does not impede  
 10 the performance of response actions or natural re-  
 11 source restoration shall not be liable—

12 “(A) to the extent liability is based solely  
 13 on subsection 107(a)(3) or 107(a)(4) of this  
 14 Act, and the arrangement for disposal, treat-  
 15 ment, or transport for disposal or treatment, or  
 16 the acceptance for transport for disposal or  
 17 treatment, involved less than five hundred  
 18 pounds of municipal solid waste (MSW) or sew-  
 19 age sludge as defined in sections 101(41) and  
 20 101(44) of this Act, respectively, or such great-  
 21 er or lesser amount as the Administrator may  
 22 determine by regulation;

23 “(B) to the extent liability is based solely  
 24 on subsection 107(a)(3) or 107(a)(4) of this  
 25 Act, and the arrangement for disposal, treat-

1           ment, or transport for disposal or treatment, or  
2           the acceptance for transport for disposal or  
3           treatment, involved less than ten pounds or li-  
4           ters of materials containing hazardous sub-  
5           stances or pollutants or contaminants or such  
6           greater or lesser amount as the Administrator  
7           may determine by regulation, except where—

8                   “(i) the Administrator has determined  
9                   that such material contributed significantly  
10                  or could contribute to the costs of response  
11                  at the facility; or

12                  “(ii) the person has failed to respond  
13                  fully and completely to information re-  
14                  quests by the United States, or has filed to  
15                  certify that, on the basis of information  
16                  within its possession, it qualifies for this  
17                  exception;

18                  “(C) to the extent liability is based solely  
19                  on subsection 107(a)(1) of this Act, for a re-  
20                  lease or threat of release from a facility, and  
21                  the person is a bona fide prospective purchaser  
22                  of the facility as defined in section 101(39);

23                  “(D) to the extent the liability of a depart-  
24                  ment, agency, or instrumentality of the United  
25                  States is based solely open section 107(a)(1) or



1           (2) with regard to a facility over which the de-  
2           partment, agency, or instrumentality exercised  
3           no regulatory or other control over activities  
4           that directly or indirectly resulted in a release  
5           or threat of release of a hazardous substance,  
6           and—

7                   “(i) all activities that directly or indi-  
8                   rectly resulted in a release or threat of a  
9                   release of a hazardous substance during  
10                  the period of ownership by the United  
11                  States occurred prior to 1976;

12                  “(ii) the activities either directly or in-  
13                  directly resulting in a release or a threat of  
14                  a release of a hazardous substance at the  
15                  facility were pursuant to a statutory au-  
16                  thority;”

17                  “(iii) such department, agency, or in-  
18                  strumentality of the United States did not  
19                  cause or contribute to the release or threat  
20                  of release of hazardous substances or pol-  
21                  lutants or contaminants at the facility; and

22                  “(iv) there are persons, other than the  
23                  United States, who are both potentially lia-  
24                  ble for the release of hazardous substances  
25                  or pollutants or contaminants at the facil-

1           ity and fully capable of performing or fi-  
2           nancing the response action at the facility;  
3           or

4           “(E) to the extent the liability of a Federal  
5           or State entity or municipality is based solely  
6           on its ownership of a road, street, or other right  
7           of way or other public transportation route over  
8           which hazardous substances are transported, or  
9           the granting of a license or permit to conduct  
10          business; or

11          “(F) for more than 10 per centum of total  
12          response costs at the facility, in aggregate, for  
13          all persons to the extent their whose liability is  
14          based solely on subsections 107(a)(3) or  
15          107(a)(4) of this Act, and the arrangement for  
16          disposal, treatment, or transport for disposal or  
17          treatment, or the acceptance for transport for  
18          disposal or treatment involved only municipal  
19          solid waste (MSW) or sewage sludge as defined  
20          in sections 101(41) and 101(44), respectively,  
21          of this Act. Such limitation on liability shall  
22          apply only—

23               “(i) where either the acts or omissions  
24               giving rise to liability occurred before the  
25               date thirty-six months after enactment of

1           this paragraph, or the person asserting the  
2           limitation institutes or participates in a  
3           qualified household hazardous waste collec-  
4           tion program within the meaning of section  
5           101(43); and

6           “(ii) where the disposal did not occur  
7           on lands owned by the United States or  
8           any department, agency, or instrumentality  
9           thereof, or on any tribal land.”.

10       (b) By inserting after subsection (m) the following:

11       “(n) PROSPECTIVE PURCHASER AND WINDFALL  
12 LIEN.—Where there are unrecovered response costs for  
13 which an owner of a facility is not liable by operation of  
14 subsection 107(a)(5)(C) of this Act, and a response action  
15 for which there are unrecovered costs inures to the benefit  
16 of such owner, the United States shall have a lien upon  
17 the facility for such unrecovered costs. Such lien—

18           “(1) shall not exceed the increase in fair market  
19       value of the property attributable to the response ac-  
20       tion at the time of a subsequent sale or other dis-  
21       position of property;

22           “(2) shall be subject to the requirements for no-  
23       tice and validity established in paragraph (3) of sub-  
24       section (l) of this section; and

1           “(3) shall continue until the earlier of satisfac-  
2           tion of the lien, or recovery of all response costs in-  
3           curred at the facility.”.

4           (c) Section 120 of the Act (42 U.S.C. 9620) is  
5           amended by inserting before the word “Facilities” in the  
6           title of the section the phrase “Entities And”.

7           (d) Section 120(a)(1) of the Act (42 U.S.C.  
8           9620(a)(1)) is amended—

9                   (1) after the word “title” in the first sentence  
10           by inserting the phrase “the right to contribution  
11           protection set forth in sections 113 and 122, when  
12           such department, agency or instrumentality resolves  
13           its share of liability under this Act and liability for  
14           all federal civil and administrative penalties and  
15           fines imposed under this Act, regardless of whether  
16           such penalties and fines are punitive or coercive in  
17           nature or are imposed for isolated or continuing vio-  
18           lations.”;

19                   (2) by inserting the word “other” before the  
20           phrase “person or entity” in the second sentence  
21           and by inserting after the second sentence the fol-  
22           lowing new sentence “The waiver of immunity in  
23           this section does not encompass uniquely govern-  
24           mental actions such as—

1           “(A) any actions of any department, agen-  
2           cy or instrumentality, except for official seizure  
3           of or holding title to a facility, taken pursuant  
4           to Federal authority to regulate the economy in  
5           preparation for, during, or otherwise in connec-  
6           tion with war through the use and implementa-  
7           tion of national priority rating systems, national  
8           wage, profit and price incentives or controls, or  
9           otherwise to mobilize the national economy for  
10          war-related production; or

11          “(B) any actions of any department, agen-  
12          cy, or instrumentality taken in response to a  
13          natural disaster pursuant to the Emergency  
14          Flood Control Work Act (33 U.S.C. 701(n)), or  
15          the Disaster Relief Act of 1974 (42 U.S.C.  
16          5121 et seq.).”;

17          (e) Section 120(a)(4) of the Act (42 U.S.C.  
18          9620(a)(4)) is amended—

19               (1) by inserting “currently” before “owned” in  
20               the first sentence;

21               (2) by inserting after the word “United States”  
22               the phrase “in the following circumstances: (A)”;  
23               and

24               (3) by inserting after the word “List” “; (B)  
25               when such facilities are included on the National

1 Priorities List but are specifically referred to the  
2 State by the Administrator pursuant to the provi-  
3 sions of section 127 of this Act; or (C) when such  
4 laws are part of an authorized program approved by  
5 the Administrator pursuant to section 127 of this  
6 Act, and such facilities are included on the National  
7 Priorities List and are to be addressed by the State  
8 authorized program pursuant to section 127 of this  
9 Act.

10 “Each department, agency, or instrumentality  
11 of the United States shall be subject to State re-  
12 quirements, both substantive and procedural, re-  
13 specting liability for the costs of responding to re-  
14 leases or threats of releases of hazardous substances  
15 at non-federally owned facilities referred to the State  
16 pursuant to section 127 of this Act, or such require-  
17 ments that are part of a State authorized program  
18 for non-federally owned facilities being addressed  
19 under a State authorized program pursuant to sec-  
20 tion 127 of this Act.”;

21 (4) after the word “preceding” by replacing the  
22 word “sentence” with “sentences”;

23 (5) at the end of the section by adding “This  
24 waiver of immunity for such facilities shall include  
25 all civil and administrative penalties and fines im-

1 posed under such laws, regardless of whether such  
2 penalties and fines are punitive or coercive in nature  
3 or are imposed for isolated or continuing violations.  
4 Neither the United States, nor any agent, employee  
5 or officer thereof, shall be immune or exempt from  
6 any process or sanction of any State or Federal  
7 Court with respect to the enforcement of any appro-  
8 priate relief under such laws, but the United States  
9 shall be entitled to remove any action filed in State  
10 court against any department, agency, instrumental-  
11 ity, employee or officer of the United States to the  
12 appropriate Federal district court. No agent, em-  
13 ployee, or officer of the United States shall be per-  
14 sonally liable for any civil or administrative penalty  
15 under any Federal or State law with respect to any  
16 act or omission within the scope of the official duties  
17 of the agent, employee, or officer. All funds collected  
18 by a State from the Federal Government from pen-  
19 alties and fines imposed for violation of any sub-  
20 stantive or procedural requirement referred to in  
21 this subsection shall be used by the State only for  
22 projects designed to improve or protect the environ-  
23 ment or to defray the costs of environmental protec-  
24 tion or enforcement.”.

1       (f) Section 120(j)(1) of the Act (42 U.S.C.  
2 9620(j)(1)) is amended before the phrase “with respect  
3 to the site” in the second sentence by inserting “or any  
4 State law applicable under section 120(a)(4)”.

5 **SEC. 404 LIABILITY.**

6       (a) Section 107(a)(1) of the Act (42 U.S.C.  
7 9607(a)(1)) is amended by striking the word “and” and  
8 inserting the word “or”;

9       (b) Section 107(a)(3) of the Act (42 U.S.C.  
10 9607(a)(3)) is amended by striking out the phrase “by  
11 any other party or entity,”;

12       (c) Section 107(a)(4) of the Act (42 U.S.C.  
13 9607(a)(4)) is amended—

14           (1) by inserting a blank line before the phrase  
15 “from which there is a release”;

16           (2) by moving the phrase “from which there is  
17 a release” to the left margin;

18           (3) inserting a comma after the phrase “threat-  
19 ened release”; and

20       (d) Section 107(a)(4)(A) of the Act (42 U.S.C.  
21 9607(a)(4)(A)) is amended by inserting the phrase “, in-  
22 cluding direct costs, indirect costs, and costs of overseeing  
23 response actions conducted by private parties” before the  
24 phrase “incurred by the United States”.



1 (e) Section 107(a)(4)(B) of the Act (42 U.S.C.  
2 9607(a)(4)(B)) is amended—

3 (1) by striking out the word “other” both times  
4 it appears; and

5 (2) by inserting the phrase “other than the  
6 United States, a State or an Indian tribe” before the  
7 phrase “consistent with the national contingency  
8 plan”.

9 (f) Section 107(c)(3) of the Act (42 U.S.C.  
10 9607(c)(3)) is amended—

11 (1) by inserting the phrase “in addition to li-  
12 ability for any response costs incurred by the United  
13 States as a result of such failure to take proper ac-  
14 tion,” after the word “person” the second time it ap-  
15 pears;

16 (2) by striking out the phrase “at least equal  
17 to, and not more than” and inserting the phrase “up  
18 to”;

19 (3) by striking out the comma after the word  
20 “times”; and

21 (4) by striking out the phrase “any costs in-  
22 curred by the Fund as a result of such failure to  
23 take proper action” and inserting the phrase “such  
24 response costs”.

1 (g) Section 107 of the Act (42 U.S.C. 9607(a)(4)(B))  
2 is amended by inserting the phrase “, or pollutant or con-  
3 taminant” after the term “hazardous substance” or “haz-  
4 ardous substances” wherever they appear in sections  
5 107(a)(2), (3) and (4); 107(b); 107(c); 107(d)(1) and (2);  
6 107(f)(1); 107(i); 107(j); and 107(k)(1)(B).

7 **SEC. 405. CIVIL PROCEEDINGS.**

8 (a) Section 113(a) of the Act (42 U.S.C. 9613(a))  
9 is amended—

10 (1) by striking out the phrase “upon application  
11 by any interested person”, and inserting the phrase  
12 “by any adversely affected person through the filing  
13 of a petition for review”; and

14 (2) by striking out the phrase “application shall  
15 be made”, and inserting in lieu thereof “petition  
16 shall be filed”.

17 (b) Section 113(b) of the Act (42 U.S.C. 9613(b))  
18 is amended—

19 (1) before “without regard to the citizenship,”  
20 by inserting the phrase “or in any manner limiting  
21 or affecting the President’s ability to carry out a re-  
22 sponse action under this title,”; and

23 (2) by inserting immediately after the first sen-  
24 tence the following sentence—“Any action initiated  
25 in any state or local court against the United States

1 (or any department, agency, or instrumentality, offi-  
2 cer or employee thereof) pursuant to or under any  
3 provision of or authorized by this title may be re-  
4 moved by the United States to the appropriate fed-  
5 eral district court in accordance with section 1446 of  
6 title 18 of the United States Code.”.

7 (c) Section 113(g) of the Act (42 U.S.C. 9613(g))  
8 is amended by striking paragraphs (2) and (3) and insert-  
9 ing:

10 “(2) ACTIONS FOR RECOVERY OF COSTS.—Ex-  
11 cept as provided in paragraph (3) below, an initial  
12 action for recovery of costs referred to in section  
13 107 of this title must be commenced—

14 “(A) for removal action, within three years  
15 after completion of all removal action taken  
16 with respect to the facility, including off-site  
17 disposal of any removed materials; except that  
18 if physical on-site construction of the remedial  
19 action is initiated within three years after the  
20 completion of all removal action taken with re-  
21 spect to the facility, costs incurred for removal  
22 action may be recovered in the cost recovery ac-  
23 tion brought under subparagraph (B); and

1           “(B) for a remedial action, within six years  
2           after initiation of physical on-site construction  
3           of the remedial action.

4           In any such action described in this subsection, the  
5           court shall enter a declaratory judgment on liability  
6           for response costs or damages that will be binding  
7           on any subsequent action or actions to recover fur-  
8           ther response costs or damages. A subsequent action  
9           or actions under section 107 of this title for further  
10          response costs at the vessel or facility may be main-  
11          tained at any time during the response action, but  
12          must be commenced no later than three years after  
13          the date of completion of all response action. Except  
14          as otherwise provided in this paragraph, an action  
15          may be commenced under section 107 of this title  
16          for recovery of costs at any time after such costs  
17          have been incurred.

18          “(3) CONTRIBUTING.—An action by a poten-  
19          tially responsible party against another potentially  
20          responsible party for recovery of any response costs  
21          or damages must be commenced within the later  
22          of—

23                 “(A) the time limitations set forth in para-  
24                 graph (2) above, or

1           “(B) where recovery is sought for costs or  
2           damages paid pursuant to a judgment or settle-  
3           ment, three years after—

4                   “(i) the date of judgment in any ac-  
5                   tion under this Act for recovery of such  
6                   costs or damages, or

7                   “(ii) the date of any administrative  
8                   order or judicial settlement for recovery of  
9                   the costs or damages paid or incurred pur-  
10                  suant to such a settlement.”.

11          (d) Section 113(g) of the Act (42 U.S.C. 9613(g))  
12 is amended by inserting the following at the end thereof:

13                  “(4) CLAIMS BY THE UNITED STATES, STATES  
14          OR INDIAN TRIBES.—Claims by the United States  
15          under section 106, and claims by the United States,  
16          a State or Indian tribe under section 107(a), of this  
17          Act shall not be deemed compulsory counterclaims in  
18          an action against the United States, a State or an  
19          Indian tribe seeking response costs, contribution,  
20          damages, or any other claim by any person under  
21          this Act.”.

22          (e) Section 113(j)(1) of the Act (42 U.S.C.  
23 9613(j)(1) is amended—

1           (1) before the phrase “or ordered” by inserting  
2           the phrase “or selected by the President pursuant to  
3           this Act,”; and

4           (2) after the phrase “or ordered” by inserting  
5           the phrase “or sought”.

6 **SEC. 406. LIMITATIONS ON CONTRIBUTION ACTIONS.**

7           Section 113 of the Act (42 U.S.C. 9613) is amended  
8 (a) by amending subsection (f)(1) as follows—

9           (1) by redesignating the paragraph as subpara-  
10          graph “(1)(A),”;

11          (2) before the phrase “may seek contribution”  
12          by inserting the phrase “who is liable or potentially  
13          liable under section 107(a) of this title”;

14          (3) by striking out the phrase “during or fol-  
15          lowing any civil action under section 106 of this title  
16          or under section 107(a) of this title”, and inserting  
17          in lieu thereof the phrase “in a claim asserted under  
18          section 107(a)”;

19          (4) by deleting the period at the end of the first  
20          sentence, and inserting “except that there shall be  
21          no right of contribution where—

22                 “(i) the person asserting the right of con-  
23                 tribution has waived such rights in a settlement  
24                 pursuant to this Act;

1           “(ii) the person from whom contribution is  
2           sought is liable solely under section 107(a)(3)  
3           of this Act, and contributed less than ten  
4           pounds or ten liters of material containing haz-  
5           ardous substances at the facility, or such great-  
6           er or lesser amount as the Administrator may  
7           determine by regulation;

8           “(iii) the person from whom contribution is  
9           sought has entered into a final settlement with  
10          the United States pursuant to section 122(g).;

11          (5) before the phrase “this section and the Fed-  
12          eral Rules” by inserting the phrase “section  
13          107(a),”; and

14          (6) by striking out the sentence “Nothing in  
15          this subsection shall diminish the right of any per-  
16          son to bring an action for contribution in the ab-  
17          sence of a civil action under section 106 of this title  
18          or section 107 of this title.”.

19          (b) By inserting after subparagraph (1)(A) the fol-  
20          lowing subparagraph—

21               “(B) Any person who commences an action for  
22               contribution against a person who is not liable by  
23               operation of subsection 107(a)(5) of this Act, or  
24               against a person who is protected from suits in con-  
25               tribution by this section or by a settlement with the

1 United States, shall be liable to the person against  
2 whom the claim of contribution is brought for all  
3 reasonable costs of defending against the claim, in-  
4 cluding all reasonable attorney's and expert witness  
5 fees.”.

6 (c) Section 113(f) of the Act (42 U.S.C. 9613(f)) is  
7 amended by striking out paragraph (2), and inserting the  
8 following:

9 “(2) SETTLEMENT.—A person that has re-  
10 solved its liability to the United States in an admin-  
11 istrative or judicially approved settlement shall not  
12 be liable for claims by other persons regarding re-  
13 sponse actions, response costs or damages addressed  
14 in the settlement. A person that has resolved its li-  
15 ability to a State in an administrative or judicially  
16 approved settlement shall not be liable for claims by  
17 persons other than the United States regarding re-  
18 sponse costs or damages addressed in the settlement  
19 for which the State has a claim under this title.  
20 Such settlement does not discharge any other poten-  
21 tially responsible persons unless its terms so provide,  
22 but it reduces the potential liability of such other  
23 persons by the amount of the settlement. The pro-  
24 tection afforded by this section shall include protec-  
25 tion against contribution claims and all other types



1 of claims, under Federal or State law, that may be  
2 asserted against the settling party for recovery of re-  
3 sponse costs or damages incurred or paid by another  
4 person, if such costs or damages are addressed in  
5 the settlement, but shall not include protection  
6 against claims based on contractual indemnification  
7 or other express contractual agreements to pay such  
8 costs or damages.”.

9 **SEC. 407. SCOPE OF RULEMAKING AUTHORITY.**

10 Section 115 of the Act (42 U.S.C. 9615), is amended  
11 by redesignating the text of the section as subsection “(a)”  
12 and adding a new subsection:

13 “(b) The authority conferred by this section includes,  
14 without limitation, authority to promulgate legislative reg-  
15 ulations to define the terms and scope of sections 101  
16 through 405 of this Act, inclusive.

17 “(c) This section confirms, without limitation, au-  
18 thority to promulgate regulations to define the terms of  
19 this Act as they apply to lenders and other financial serv-  
20 ices providers, and property custodians, trustees, and  
21 other fiduciaries.”.

22 **SEC. 408. ENHANCEMENT OF SETTLEMENT AUTHORITIES.**

23 Section 122 of the Act (42 U.S.C. 9622), is amend-  
24 ed—

25 (a) by striking out subparagraph (e)(3);

1 (b) by redesignating subparagraphs (e) (4) and  
2 (5) as subparagraphs (e) (3) and (4), respectively;

3 (c) by redesignating subparagraph (e)(6) as a  
4 new section 122(o) and by amending redesignated  
5 section 122(n)—

6 (1) by deleting “remedial investigation and  
7 feasibility study” and inserting in lieu thereof  
8 “response action”; and

9 (2) by deleting “remedial action” in both  
10 places where it appears and inserting “response  
11 action”;

12 (d) by inserting at the end of section 122 the  
13 following—

14 “(p) RETENTION OF FUNDS.—If, as part of any  
15 agreement under this Chapter, the President will be carry-  
16 ing out any action and the parties will be paying amounts  
17 to the President, the President may retain such amounts  
18 in interest bearing accounts, and use such amounts, to-  
19 gether with accrued interest, for purposes of carrying out  
20 the agreement.

21 “(q) Notwithstanding the limitations on review in sec-  
22 tion 113(h), and except as provided in subsection (g) of  
23 this section, a person whose claim for response costs or  
24 contribution is limited as a result of contribution protec-  
25 tion afforded by an administrative settlement under this

1 section may challenge the cost recovery component of such  
2 settlement only by filing a complaint against the Adminis-  
3 trator in the United States District Court within 60 days  
4 after such settlement becomes final. Venue shall lie in the  
5 district in which the appropriate Regional Administrator  
6 has her principal office. Any review of an administrative  
7 settlement shall be limited to the administrative record,  
8 and the settlement shall be upheld unless the objecting  
9 party can demonstrate on that record that the decision  
10 of the President to enter into the administrative settle-  
11 ment was arbitrary, capricious, or otherwise not in accord-  
12 ance with law.”.

13 (e) by deleting subsection (f)(1) and inserting  
14 in lieu thereof:

15 “(1) FINAL COVENANTS.—The President shall  
16 offer potentially responsible parties who enter into  
17 settlement agreements otherwise acceptable to the  
18 United States a final covenant not to sue concerning  
19 any liability to the United States under this Act, in-  
20 cluding a covenant with respect to future liability,  
21 for response actions or response costs, provided  
22 that—

23 “(A) the settling party agrees to perform,  
24 or there are other adequate assurances of the  
25 performance of, a final remedial action for the

1 release or threat of release that is the subject  
2 of the settlement;

3 “(B) The settlement agreement has been  
4 reached prior to the commencement of litigation  
5 against the settling party under section 106 or  
6 107 of this Act with respect to this facility;

7 “(C) The settling party waives all contribu-  
8 tion rights against other potentially responsible  
9 parties at the facility; and

10 “(D) The settling party pays premium that  
11 compensates for the risks of remedy failure; fu-  
12 ture liability resulting from unknown condi-  
13 tions; unanticipated increases in the cost of any  
14 uncompleted response action, unless the settling  
15 party is performing the response action; and  
16 the United States’ litigation risk with respect to  
17 persons who have not resolved their liability to  
18 the United States under this Act, unless all  
19 parties have settled their liability to the United  
20 States, or the settlement covers 100 percent of  
21 the United States’ response costs. The Presi-  
22 dent shall have sole discretion to determine the  
23 appropriate amount of any such premium, and  
24 such determinations are committed to the  
25 President’s discretion. The President has dis-

1           cretion to waive or reduce the premium pay-  
2           ment for persons who demonstrate an inability  
3           to pay such a premium.

4           “(2) DISCRETIONARY COVENANTS.—For all  
5           other settlements under this title, the President  
6           may, in his discretion, provide any person with a  
7           covenant not to sue concerning any liability to the  
8           United States under this title, if the covenant not to  
9           sue is in the public interest. The President may in-  
10          clude any conditions in such covenant not to sue, in-  
11          cluding but not limited to the additional condition  
12          referred to in paragraph (5) of this subsection. In  
13          determining whether such conditions or covenants  
14          are in the public interest, the President shall con-  
15          sider the effectiveness and reliability of the response  
16          action, the nature of the risks remaining at the facil-  
17          ity, the strength of evidence, the likelihood of cost  
18          recovery, the reliability of any response action or ac-  
19          tions to restore, replace or acquire the equivalent of  
20          injured natural resources, and any other factors rel-  
21          evant to the protection of human health, welfare,  
22          and the environment.”;

23           (f) by striking out the word “remedial”, wher-  
24           ever it appears in paragraph (f)(2), and inserting  
25           the word “response”;

1 (g) by deleting paragraphs (f)(3) and (f)(4);

2 (h) by redesignating existing paragraphs (f)(2),  
3 (f)(5) and (f)(6) as paragraphs (f)(3), (f)(4), and  
4 (f)(5), respectively;

5 (i) in redesignated subparagraph (f)(5)(A)—

6 (1) by striking out the word “remedial”,  
7 and inserting in lieu thereof the word “re-  
8 sponse”;

9 (2) by deleting “paragraph (2)” in the  
10 first clause of the first sentence and inserting  
11 “paragraph (1) or (3)” in lieu thereof; and

12 (3) by deleting “de minimis settlements”  
13 and inserting “de minimis and other expedited  
14 settlements pursuant to subsection (g) of this  
15 section” in lieu thereof;

16 (4) by striking the phrase “the President  
17 certifies under paragraph (3) that remedial ac-  
18 tion has been completed at the facility con-  
19 cerned”, and inserting in lieu thereof the phrase  
20 “that the response action that is the subject of  
21 the settlement agreement is selected”.

22 (j) by amending redesignated subsection  
23 (f)(5)(B)—

1           (1) by striking “In extraordinary cir-  
2           cumstances, the” and inserting the word  
3           “The”;

4           (2) by striking the phrase “those referred  
5           to in paragraph (4) and”;

6           (3) by inserting “the agreement containing  
7           the covenant not to sue provides for payment of  
8           a premium to address possible remedy failure or  
9           any releases that may result from unknown  
10          conditions, and” before the phrase “the other  
11          terms”; and

12          (4) by inserting at the end the following  
13          “The President may, in his discretion, waive or  
14          reduce the premium payment for persons who  
15          demonstrate an inability to pay such a pre-  
16          mium.”

17          (k) by deleting paragraph (g)(1)(A) and insert-  
18          ing in lieu thereof:

19          “(g) EXPEDITED FINAL SETTLEMENT.—

20                 “(1) PARTIES ELIGIBLE FOR EXPEDITED SET-  
21          TLEMENT.—Wherever practicable and in the public  
22          interest, and as provided in section 122a of this  
23          title, the President will as promptly as possible offer  
24          to reach a final administrative or judicial settlement  
25          with potentially responsible parties who, in the judg-

1       ment of the President, meet one or more of the fol-  
2       lowing conditions for eligibility for an expedited set-  
3       tlement:

4               “(A) the potentially responsible party’s in-  
5       dividual contribution of hazardous substances  
6       at the facility is de minimis. The contribution  
7       of hazardous substance to a facility by a poten-  
8       tially responsible party is de minimis if:

9               “(i) the potentially responsible party’s  
10       volumetric contribution of materials con-  
11       taining hazardous substances is minimal in  
12       comparison to the total volumetric con-  
13       tributions at the facility; such individual  
14       contribution is presumed to be minimal if  
15       it is one percent or less of the total volu-  
16       metric contribution at the facility, unless  
17       the Administrator identifies a different  
18       threshold based on site-specific factors;  
19       and

20               “(ii) the potentially responsible par-  
21       ty’s hazardous substances do not present  
22       toxic or other hazardous effects that are  
23       significantly greater than those of other  
24       hazardous substances at the facility; or”



1 (l) by inserting the following after subsection  
2 (g)(1)(B):

3 “(C) The potentially responsible party’s li-  
4 ability is based solely on subsection 107(a)(3)  
5 or 107(a)(4) of this title, and the arrangement  
6 for disposal, treatment, or transport for dis-  
7 posal or treatment, or the acceptance for trans-  
8 port for disposal or treatment, involved only  
9 municipal solid waste (MSW) or sewage sludge  
10 as defined in section 101(41) or 101(44), re-  
11 spectively, of this Act. The Administrator may  
12 offer to settle the liability of generators and  
13 transporters of MSW or sewage sludge whose li-  
14 ability is limited pursuant to section  
15 107(a)(5)(A) of this title for up to 10 percent  
16 of the total response costs at the facility; or

17 “(D) The potentially responsible party is a  
18 small business or a municipality and has dem-  
19 onstrated to the United States a limited ability  
20 to pay response costs. For purposes of this pro-  
21 vision—

22 “(i) In the case of a small business,  
23 the President shall consider, to the extent  
24 that information is provided by the small  
25 business, the business’ ability to pay for its

1 total allocated share, and demonstrable  
2 constraints on its ability to raise revenues.

3 “(ii) In the case of a municipal owner  
4 or operator, the President shall consider,  
5 to the extent that information is provided  
6 by the municipality, the following factors:

7 (1) the municipality’s general obligation  
8 bond rating and information about the  
9 most recent bond issue for which the rat-  
10 ing was prepared; (2) the amount of total  
11 available funds (other than dedicated  
12 funds); (3) the amount of total operating  
13 revenues (other than obligated or encum-  
14 bered revenues); (4) the amount of total  
15 expenses; (5) the amounts of total debt  
16 and debt service; (6) per capita income;  
17 and (7) real property values. A municipal-  
18 ity may also submit for consideration by  
19 the President an evaluation of the poten-  
20 tial impact of the settlement on essential  
21 services that the municipality must pro-  
22 vide, and the feasibility of making delayed  
23 payments or payments over time. If a mu-  
24 nicipality asserts that it has additional en-  
25 vironmental obligations besides its poten-

1           tial liability under this Act, then the mu-  
2           nicipality may create a list of the obliga-  
3           tions, including an estimate of the costs of  
4           complying with such obligations. A munici-  
5           pality may establish an inability to pay  
6           through an affirmative showing that such  
7           payment of its liability under this Act  
8           would either (I) create a substantial de-  
9           monstrable risk that the municipality  
10          would default on existing debt obligations,  
11          be forced into bankruptcy, be forced to dis-  
12          solve, or be forced to make budgetary cut-  
13          backs that would substantially reduce cur-  
14          rent levels of protection of public health  
15          and safety, or (II) necessitate a violation of  
16          legal requirements or limitations of general  
17          applicability concerning the assumption  
18          and maintenance of fiscal municipal obliga-  
19          tions.”.

20           (m) by deleting paragraphs (2) and (3) of sub-  
21          section (g) and inserting in lieu thereof:

22           “(2) The determination of whether a party is  
23          eligible for an expedited settlement shall be made on  
24          the basis of information available to the President at  
25          the time the settlement is negotiated. Such deter-

1 mination, and the settlement, are committed to the  
2 President's unreviewable discretion. If the President  
3 determines not to apply these provisions for expedited settlements at a facility, the basis for that determination must be explained in writing.

6 “(3) Additional factors relevant to municipalities.—In any settlement with a municipality pursuant to this title, the President may take additional equitable factors into account in determining an appropriate settlement amount, including, without limitation, the limited resources available to that party, and any in-kind services that the party may provide to support the response action at the facility. In considering the value of in-kind services, the President shall consider the fair market value of those services.”.

17 (n) by striking in paragraph (g)(4) “\$500,000”  
18 and inserting “\$2,000,000”.

19 (o) by striking paragraph (g)(5) and redesignating paragraph (g)(6) as (g)(5).

21 (p) by amending paragraph (h) by striking—

22 (1) the title, and inserting the phrase “Authority to settle claims for penalties, punitive  
23 damages and cost recovery”; and  
24

1           (2) by striking out the phrase “settlement  
2 authority”.

3           (q) by amending paragraph (h)(1)—

4                 (1) before the phrase “costs incurred” by  
5 inserting the phrase “past and future”;

6                 (2) before the phrase “by the United  
7 States Government” by inserting the phrase “or  
8 that may be incurred”;

9                 (3) by inserting after the phrase “if the  
10 claim has not been referred to the Department  
11 of Justice for further action”, the following:  
12 “The head of any department or agency with  
13 the authority to seek, or to request the Attor-  
14 ney General to seek, civil or punitive damages  
15 under this Act may settle claims for any such  
16 penalties or damages which may otherwise be  
17 assessed in civil administrative or judicial pro-  
18 ceedings”; and by striking out “\$500,000”, and  
19 inserting in lieu thereof “\$2,000,000”.

20           (r) by striking paragraph (h)(4).

21 **SEC. 409. ALLOCATION PROCEDURES.**

22         The Act is amended by inserting following section  
23 122:

24 **“SEC. 122a ALLOCATION AT MULTI-PARTY FACILITIES.**

25         “(a) SCOPE.—

1           “(1) Except as provided in paragraph (3) of  
2       this section, for each non-federally owned facility  
3       listed on the National Priorities List involving two  
4       or more potentially responsible parties, the Adminis-  
5       trator shall—

6           “(A) initiate the allocation process estab-  
7       lished under this section for any remedial action  
8       selected by the President after the date of en-  
9       actment of the Superfund Reform Act of 1994,  
10      and

11          “(B) initiate the allocation process estab-  
12      lished in subsections (c)(2) through (d)(3) of  
13      this section for any remedial action selected by  
14      the President prior to the date of enactment of  
15      the Superfund Reform Act of 1994, when re-  
16      quested by any potentially responsible party  
17      who has resolved its liability to the United  
18      States with respect to the remedial action or is  
19      performing the remedial action pursuant to an  
20      order issued under section 106(a) of this title,  
21      to assist in allocating shares among potentially  
22      responsible parties. The allocation performed  
23      pursuant to this subsection shall not be con-  
24      strued to require—

1 “(i) payment of an orphan share pur-  
2 suant to subsection (e) of this section; or

3 “(ii) the conferral of reimbursement  
4 rights pursuant to subsection (h) of this  
5 section.

6 “(2) Except as provided in paragraph (3) of  
7 this section, the Administrator may initiate the allo-  
8 cation process established under this section with re-  
9 spect to any other facility involving two or more po-  
10 tentially responsible parties, as the Administrator  
11 deems appropriate.

12 “(3) The allocation process established under  
13 this section shall not apply to any facility where—

14 “(i) there has been a final settlement, de-  
15 cree or order that determines all liability or al-  
16 located shares of all potentially responsible par-  
17 ties with respect to the facility; or

18 “(ii) where response action is being carried  
19 out by a State pursuant to referral or author-  
20 ization under section 104(k) of this title.

21 “(4) Nothing in this section limits or affects—

22 “(A) the Administrator’s obligation to per-  
23 form an allocation for facilities that have been  
24 the subject of partial or expedited settlements;

1           “(B) the ability of a potentially responsible  
2           party at a facility to resolve its liability to the  
3           United States or other parties at any time be-  
4           fore initiation or completion of the allocation  
5           process; or

6           “(C) the validity, enforceability, finality or  
7           merits of any judicial or administrative order,  
8           judgment or decree issued, signed, lodged, or  
9           entered with respect to liability under this Act,  
10          or authorizes modification of any such order,  
11          judgment or decree.

12          “(b) MORATORIUM ON COMMENCEMENT OR CON-  
13          TINUATION OF SUITS.—

14               “(1) No person may commence an action pursu-  
15               ant to section 107 of this Act regarding a response  
16               action for which an allocation must be performed  
17               under subsection (a)(1)(A) of this section, or for  
18               which the Administrator has initiated an allocation  
19               under subsection (a)(1)(B) or (a)(2) of this section,  
20               until 60 days after issuance of the allocator’s report  
21               under subsection (d)(1) of this section.

22               “(2) If an action under section 107 of this Act  
23               regarding a response for which an allocation is to be  
24               performed under this section is pending (A) upon  
25               date of enactment of the Superfund Reform Act of



1       1994, or (B) upon initiation of an allocation under  
2       subsection (a)(1)(B) or (a)(2) of this section, the ac-  
3       tion shall be stayed until 60 days after the issuance  
4       of an allocator’s report, unless the court determines  
5       that a stay will not result in a just and expeditious  
6       resolution of the action.

7               “(3) Any applicable limitations period with re-  
8       spect to actions subject to paragraph (1) shall be  
9       tolled from the earlier of—

10              “(A) the date of listing of the facility on  
11              the National Priorities list; or

12              “(B) the commencement of the allocation  
13              process pursuant to this section, until 120 days  
14              after the allocation report required by this sec-  
15              tion has been provided to the parties to the al-  
16              location.

17              “(4) Nothing in this section shall in any way  
18       limit or affect the President’s authority to exercise  
19       the powers conferred by sections 103, 104, 105,  
20       106, or 122 of this title, or to commence an action  
21       where there is a contemporaneous filing of a judicial  
22       consent decree resolving a party’s liability; or to file  
23       a proof of claim or take other action in a proceeding  
24       under title 11 of the United States Code.

1           “(5) The procedures established in this section  
2           are intended to guide the exercise of settlement au-  
3           thority by the United States, and shall not be con-  
4           strued to diminish or affect the principles of retro-  
5           active, strict, joint and several liability under this  
6           title.

7           “(c) COMMENCEMENT OF ALLOCATION.—

8           “(1) RESPONSIBLE PARTY SEARCH.—At all fa-  
9           cilities subject to this section, the Administrator  
10          shall, as soon as practicable but not later than 60  
11          days after the earlier of the commencement of the  
12          remedial investigation or the listing of the facility on  
13          the National Priorities List, initiate a search for po-  
14          tentially responsible parties, using its authorities  
15          under section 104 of this title.

16          “(2) NOTICE TO PARTIES.—As soon as prac-  
17          ticable after receipt of sufficient information, but  
18          not more than eighteen months after commencement  
19          of the remedial investigation, the Administrator  
20          shall—

21                 “(A) notify those potentially responsible  
22                 parties who will be assigned shares in the allo-  
23                 cation process and notify the public, in accord-  
24                 ance with section 117(d) of this title, of the list  
25                 of potentially responsible parties preliminarily

1 identified by the Administrator to be assigned  
2 shares in the allocation process; and

3 “(B) provide the notified potentially re-  
4 sponsible parties with a list of neutral parties  
5 who are not employees of the United States and  
6 who the Administrator determines, in his or her  
7 sole discretion, are qualified to perform an allo-  
8 cation at the facility.

9 “(3) SELECTION OF ALLOCATOR.—The Admin-  
10 istrator shall thereafter—

11 “(A) acknowledge the parties’ selection of  
12 an allocator from the list, or select an allocator  
13 from the list provided to the parties if the par-  
14 ties cannot agree on a selection within 30 days  
15 of the notice;

16 “(B) contract with the selected allocator  
17 for the provision of allocation services; and

18 “(C) make available all responses to infor-  
19 mation requests, as well as other relevant infor-  
20 mation concerning the facility and potentially  
21 responsible parties, to the parties and to the al-  
22 locator within 30 days of the appointment of  
23 the allocator. The Administrator shall not make  
24 available any privileged or confidential informa-  
25 tion, except as otherwise authorized by law.

1           “(4) PROPOSED ADDITION OF PARTIES.—

2           “(A) For 60 days after information has  
3           been made available pursuant to paragraph  
4           3(C), the parties identified by the Adminis-  
5           trator and members of the affected community  
6           shall have the opportunity to identify and pro-  
7           pose additional potentially responsible parties or  
8           otherwise provide information relevant to the  
9           facility or such potentially responsible parties.  
10          This period may be extended by the Adminis-  
11          trator for an additional 30 days upon request of  
12          a party.

13          “(B) Within 30 days after the end of the  
14          period specified in paragraph (A) for identifica-  
15          tion of additional parties, the Administrator  
16          shall issue a final list of parties subject to the  
17          allocation process, hereinafter the “allocation  
18          parties”. The Administrator shall include in the  
19          list of allocation parties those parties identified  
20          pursuant to paragraph (A) in the allocation  
21          process unless the Administrator determines  
22          and explains in writing that there is not a suffi-  
23          cient basis in law or fact to take enforcement  
24          action with respect to those parties under this  
25          title, or that they have entered into an expe-

1 dited settlement under section 122(g). The Ad-  
2 ministrator's determination is to be based on  
3 the information available at the time of the de-  
4 termination and is committed to the Adminis-  
5 trator's unreviewable discretion.

6 “(5) ROLE OF FEDERAL AGENCIES.—Federal  
7 departments, agencies or instrumentalities that are  
8 identified as potentially responsible parties shall be  
9 subject to, and be entitled to the benefits of, the al-  
10 location process provided by this section to the same  
11 extent as any other party.

12 “(6) REPRESENTATION OF THE UNITED  
13 STATES.—The Administrator and the Attorney Gen-  
14 eral shall be entitled to review all documents and  
15 participate in any phase of the allocation proceeding.

16 “(d) ALLOCATION DETERMINATION.—

17 “(1) SETTLEMENT AND ALLOCATION RE-  
18 PORT.—Following issuance of the list of allocation  
19 parties, the allocator may convene the allocation par-  
20 ties for the purpose of facilitating agreement con-  
21 cerning their shares. If the allocation parties do not  
22 agree to a negotiated allocation of shares, the allo-  
23 cator shall prepare a written report, with a  
24 nonbinding, equitable allocation of percentage shares

1 for the facility, and provide such report to the allo-  
2 cation parties and the Administrator.

3 “(2) INFORMATION REQUESTS.—To assist in  
4 the allocation of shares, the allocator may request  
5 information from the allocation parties, and may  
6 make additional requests for information at the re-  
7 quest of any allocation party. The allocator may re-  
8 quest the Administrator to exercise any information-  
9 gathering authority under this title where necessary  
10 to assist in determining the allocation of shares.

11 “(3) FACTORS IN THE ALLOCATION.—Unless  
12 the allocation parties agree to a negotiated alloca-  
13 tion, the allocator shall prepare a nonbinding, equi-  
14 table allocation of percentage shares for the facility  
15 based on the following factors:

16 “(A) the amount of hazardous substances  
17 contributed by each allocation party;

18 “(B) the degree of toxicity of hazardous  
19 substances contributed by each allocation party;

20 “(C) the mobility of hazardous substances  
21 contributed by each allocation party;

22 “(D) the degree of involvement of each al-  
23 location party in the generation, transportation,  
24 treatment, storage, or disposal of the hazardous  
25 substance;

1           “(E) the degree of care exercised by each  
2 allocation party with respect to the hazardous  
3 substance, taking into account the characteris-  
4 tics of the hazardous substance;

5           “(F) the cooperation of each allocation  
6 party in contributing to the response action and  
7 in providing complete and timely information  
8 during the allocation process; and

9           “(G) such other factors that the Adminis-  
10 trator determines are appropriate by published  
11 regulation or guidance, including guidance with  
12 respect to the identification of orphan shares  
13 pursuant to paragraph (3) of this subsection

14           “(4) IDENTIFICATION OF ORPHAN SHARES.—  
15 The allocator may determine that a percentage share  
16 for the facility is specifically attributable to an “or-  
17 phan share”. The orphan share may only consist of  
18 the following:

19           “(A) shares attributable to hazardous sub-  
20 stances that the allocator determines, on the  
21 basis of information presented, to be specifically  
22 attributable to identified but insolvent or de-  
23 funct responsible parties who are not affiliated  
24 with any allocation party;

1           “(B) the difference between the aggregate  
2           shares that the allocator determines, on the  
3           basis of the information presented, are specifi-  
4           cally attributable to contributors of municipal  
5           solid waste subject to the limitations in section  
6           107(a)(5)(D) of this title, and the share actu-  
7           ally assumed by those parties in any settle-  
8           ments with the United States pursuant to sub-  
9           section 122(g) of this title, including the fair  
10          market value of in-kind services provided by a  
11          municipality; and

12          “(C) the difference between the aggregate  
13          share that the allocator determines, on the  
14          basis of information presented, is specifically  
15          attributable to parties with a limited ability to  
16          pay response costs and the share actually as-  
17          sumed by those parties in any settlements with  
18          the United States pursuant to subsection  
19          122(b) of this title.

20          The orphan share shall not include shares attrib-  
21          utable to hazardous substances that the allocator  
22          cannot attribute to any identified party. Such shares  
23          shall be distributed among the allocation parties.

24          “(e) FUNDING OF ORPHAN SHARES.—From funds  
25          available in the Fund in any given fiscal year, and without



1 further appropriation action, the President shall make re-  
2 imbursements from the Fund, to eligible parties for costs  
3 incurred and equitably attributable to orphan shares de-  
4 termined pursuant to this section, provided that Fund fi-  
5 nancing of orphan shares shall not exceed \$300,000,000  
6 in any fiscal year. Reimbursements made under this sub-  
7 section shall be subject to such terms and conditions as  
8 the President may prescribe.

9       “(f) TIMING.—The allocator shall provide the report  
10 required by subsection (d)(1) of this section to the alloca-  
11 tion parties and the Administrator within 180 days of the  
12 issuance of the list of parties pursuant to subsection  
13 (c)(4)(B) of this section. Upon request, for good cause  
14 shown, the Administrator may grant the allocator addi-  
15 tional time to complete the allocation, not to exceed 90  
16 days.

17       “(g) SETTLEMENT FOLLOWING ALLOCATION.—

18               “(1) OBLIGATIONS OF THE UNITED STATES.—

19       The President will accept a timely offer of settle-  
20 ment from a party based on the share determined by  
21 the allocator, if it includes appropriate premia and  
22 other terms and conditions of settlement, unless the  
23 Administrator, with the concurrence of the Attorney  
24 General of the United States, determines that a set-  
25 tlement based on the allocator’s determinations

1 would not be fair, reasonable, and in the public in-  
2 terest. The Administrator and the Attorney General  
3 shall seek to make any such determination within 60  
4 days from the date of issuance of the allocator's re-  
5 port. The determinations of the Administrator and  
6 the Attorney General shall not be judicially  
7 reviewable.

8 “(2) If the Administrator and the Attorney  
9 General determine not to settle on the basis of the  
10 allocation, they shall provide the allocation parties  
11 and members of the affected community with a writ-  
12 ten explanation of the Administrator's determina-  
13 tion. If the Administrator and the Attorney General  
14 make such a determination, the parties who are will-  
15 ing to settle on the basis of the allocation are enti-  
16 tled to a consultation with an official appointed by  
17 the President, to present any objections to the deter-  
18 mination, within 60 days after the determination.

19 “(3) Settlements based on allocated shares shall  
20 include—

21 “(A) a waiver of contribution rights  
22 against all parties who are potentially respon-  
23 sible parties for the response action;

24 “(B) covenants not to sue, consistent with  
25 the provisions of section 122(f) of this title, and

1 provisions regarding performance or adequate  
2 assurance of performance of response actions  
3 addressed in the settlement;

4 “(C) a premium that compensates for the  
5 United States’ litigation risk with respect to po-  
6 tentially responsible parties who have not re-  
7 solved their liability to the United States, ex-  
8 cept that no such premium shall apply if all  
9 parties settle or the settlement covers one 100  
10 percent of response costs;

11 “(D) contribution protection, consistent  
12 with sections 113(f) and 122(g) of this title, re-  
13 garding matters addressed in the settlement.  
14 Such settlement does not discharge any of the  
15 other potentially responsible parties unless its  
16 terms so provide, but it reduces the potential li-  
17 ability of the others by the amount of the settle-  
18 ment; and

19 “(E) provisions through which the settling  
20 parties shall receive reimbursement from the  
21 Fund for any response costs incurred by such  
22 parties in excess of the aggregate of their allo-  
23 cated share and any premia required by the set-  
24 tlement. Such right to reimbursement shall not  
25 be contingent on the United States’ recovery of

1 response costs from any responsible person not  
2 a party to any settlement with the United  
3 States.

4 “(4) The President shall report annually to  
5 Congress on the administration of the allocation  
6 scheme, and provide information comparing alloca-  
7 tion results with actual settlements at multiparty fa-  
8 cilities.

9 “(5) The provisions of this section shall not  
10 apply to any offer of settlement made after com-  
11 mencement of litigation by the United States against  
12 the offering party under section 107 of this title.

13 “(h) AUTHORIZATION OF REIMBURSEMENT.—In any  
14 settlement in which a party agrees to perform response  
15 work in excess of its share, the Administrator shall have  
16 authority in entering the settlement to confer a right of  
17 reimbursement on the settling party pursuant to such pro-  
18 cedures as the Administrator may prescribe.

19 “(i) POST-SETTLEMENT LITIGATION.—

20 “(1) IN GENERAL.—The United States may  
21 commence an action under section 107 against any  
22 person who has not resolved its liability to the Unit-  
23 ed States following allocation, on or after 60 days  
24 following issuance of the allocator’s report. In any  
25 such action, the potentially responsible parties shall

1 be liable for all unrecovered response costs, including  
2 any federally-funded orphan share identified in ac-  
3 cordance with subsection (d)(4). Defendants in any  
4 such action may implead any allocation party who  
5 did not resolve its liability to the United States. The  
6 Administrator and the Attorney General shall issue  
7 guidelines to ensure that the relief sought against de  
8 minimis parties under principles of joint and several  
9 liability will not be grossly disproportionate to their  
10 contribution to the facility. The application of such  
11 guidelines is committed to the discretion of the Ad-  
12 ministrator and the Attorney General.

13 “(2) In commencing any action under section  
14 107 following allocation, the Attorney General must  
15 certify, in the complaint, that the United States has  
16 been unable to reach a settlement that would be in  
17 the best interests of the United States.

18 “(3) ADMISSIBILITY OF ALLOCATOR’S RE-  
19 PORT.—The allocator’s report shall not be admissi-  
20 ble in any court with respect to a claim brought by  
21 or against the United States, except in its capacity  
22 as a nonsettling potentially responsible party, or for  
23 the determination of liability. The allocator’s report,  
24 subject to the rules and discretion of the court, may  
25 be admissible solely for the purpose of assisting the

1 court in making an equitable allocation of response  
2 costs among the relative shares of nonsettling liable  
3 parties.

4 “(4) OTHER AUTHORITIES UNAFFECTED.—  
5 Nothing in this section limits or in any way affects  
6 the exercise of the President’s authority pursuant to  
7 sections 103, 104, 105, or 106.

8 “(5) COSTS.—

9 “(A) The costs of implementing the alloca-  
10 tion procedure set forth in this section, includ-  
11 ing reasonable fees and expenses of the allo-  
12 cator, shall be considered necessary costs of re-  
13 sponse.

14 “(B) The costs attributable to any funding  
15 of orphan shares identified by the allocator pur-  
16 suant to subsection (d)(4) also shall be consid-  
17 ered necessary costs of response, and shall be  
18 recoverable from liable parties who do not re-  
19 solve their liability on the basis of the alloca-  
20 tion.

21 “(6) REJECTION OF SHARE DETERMINATION.—  
22 In any action by the United States under this title,  
23 if the United States has rejected an offer of settle-  
24 ment that is consistent with subsections (g)(1) and  
25 (g)(3) of this section and was presented to the Unit-

1 ed States prior to the commencement of the action,  
2 the offeror shall be entitled to recover from the  
3 United States the offeror's reasonable costs of de-  
4 fending the action after the making of the offer, in-  
5 cluding reasonable attorneys' fees, if the ultimate  
6 resolution of liability or allocation of costs with re-  
7 spect to the offeror, taking into account all settle-  
8 ments and reimbursements with respect to the facil-  
9 ity other than those attributable to insurance or in-  
10 demnification, is as or more favorable to the offeror  
11 than the offer based on the allocation.

12 “(j) PROCEDURES.—The Administrator shall further  
13 define the procedures of this section by regulation or guid-  
14 ance, after consultation with the Attorney General.”.

15 **TITLE V—REMEDY SELECTION AND**  
16 **CLEANUP STANDARDS**

17 **SEC. 501. PURPOSES AND OBJECTIVES.**

18 The purposes and objectives of this title are to—

19 (a) ensure that remedial actions under the Act  
20 are protective of human health and the environment;

21 (b) provide consistent and equivalent protection  
22 to all communities affected by facilities subject to re-  
23 medial action; and,

24 (c) ensure that the national goals, national ge-  
25 neric cleanup levels, and the national risk protocol

1 required by this title are developed through a proc-  
2 ess based on substantial public input and, where ap-  
3 propriate, on consensual decisionmaking.

4 **SEC. 502. CLEANUP STANDARDS AND LEVELS.**

5 Section 121(d)(1)–(2)(C)(i) of the Act (42 U.S.C.  
6 9621(d)) is amended to read as follows:

7 “(d) DEGREE OF CLEANUP.—

8 “(1) PROTECTION OF HUMAN HEALTH AND  
9 THE ENVIRONMENT.—A remedial action selected  
10 under this section or otherwise required or agreed to  
11 by the President under this Act shall be protective  
12 of human health and the environment. In order to  
13 provide consistent protection to all communities, the  
14 Administrator shall promulgate national goals to be  
15 applied at all facilities subject to remedial action  
16 under this Act.

17 “(2) GENERIC CLEANUP LEVELS.—The Admin-  
18 istrator shall promulgate, as appropriate, national  
19 generic cleanup levels for specific hazardous sub-  
20 stances, pollutants, or contaminants, based on the  
21 national goals established in paragraph (1). A clean-  
22 up level shall—

23 “(A) reflect reasonably anticipated future  
24 land uses,



1           “(B) reflect other variables which can be  
2           easily measured at a facility and whose effects  
3           are scientifically well-understood to vary on a  
4           site-specific basis, and

5           “(C) represent concentration levels below  
6           which a response action is not required.

7           “(3) SITE-SPECIFIC METHODS TO ESTABLISH  
8           CLEANUP LEVELS.—Notwithstanding the promulga-  
9           tion of national generic cleanup levels under sub-  
10          section (d)(2) and nationally-approved generic rem-  
11          edies under subsection (b)(4) of this section, the Ad-  
12          ministrator may, as appropriate, rely on a site-spe-  
13          cific risk assessment to determine the proper level of  
14          cleanup at a facility, based on the national goals es-  
15          tablished in paragraph (1) and the reasonably antici-  
16          pated future land uses at the facility. This may  
17          occur if a national generic cleanup level has not been  
18          developed or to account for particular characteristics  
19          of a facility or its surroundings. In establishing site-  
20          specific cleanup levels, the President shall consider  
21          the views of the affected community in accordance  
22          with section 117 of this Act.

23          “(4) RISK ASSESSMENT.—The Administrator  
24          shall promulgate a national risk protocol for con-  
25          ducting risk assessments based on realistic assump-

1        tions. After promulgation, risk assessments underly-  
2        ing the degree of cleanup and remedy selection proc-  
3        esses shall use the national risk protocol.

4            “(5) FEDERAL AND STATE LAWS.—

5            “(A) A remedial action shall be required to  
6        comply with the substantive requirements of—

7            “(i) any standard, requirement, cri-  
8        terion, or limitation under any federal en-  
9        vironmental or facility siting law that the  
10       President determines is suitable for appli-  
11       cation to the remedial action at the facil-  
12       ity; and

13          “(ii) any promulgated standard, re-  
14       quirement, criterion, or limitation under  
15       any state environmental law specifically  
16       addressing remedial action that is adopted  
17       for the purpose of protecting human health  
18       or the environment with the best available  
19       scientific evidence through a public process  
20       where such a law is more stringent than  
21       any such federal cleanup standard, require-  
22       ment, criterion, or limitation, or the clean-  
23       up level determined in accordance with the  
24       requirements of this section.

1           “(B) Procedural requirements of federal  
2           and state standards, requirements, criteria, or  
3           limitations, including but not limited to permit-  
4           ting requirements, shall not apply to response  
5           actions conducted on-site. In addition, compli-  
6           ance with such laws shall not be required with  
7           respect to return, replacement, or redisposal of  
8           contaminated media or residuals of contami-  
9           nated media into the same medium in or very  
10          near existing areas of contamination on-site.

11          “(C) The President may select a remedial  
12          action meeting the requirements of paragraph  
13          (1) that does not attain a level or standard of  
14          control at least equivalent to the federal or  
15          State standards, requirements, criteria, or limi-  
16          tations as required by paragraph (A), if the  
17          President finds that—

18               “(i) the remedial action selected is  
19               only part of a total remedial action that  
20               will attain such level or standard of control  
21               when completed;

22               “(ii) compliance with such require-  
23               ment at that facility will result in greater  
24               risk to human health and the environment  
25               than alternative options;

1           “(iii) compliance with such require-  
2           ments is technically impracticable from an  
3           engineering perspective;

4           “(iv) a generic remedy under section  
5           (b)(4) has been selected for the facility;

6           “(v) the remedial action selected will  
7           attain a standard of performance that is  
8           equivalent to that required under the  
9           standard, requirement, criterion, or limita-  
10          tion identified under (A)(i) and (A)(ii)  
11          through use of another approach;

12          “(vi) with respect to a State standard,  
13          requirement, criterion, or limitation, the  
14          State has not consistently applied (or dem-  
15          onstrated the intention to consistently  
16          apply) the standard, requirement, criterion,  
17          or limitation in similar circumstances at  
18          other remedial actions within the State; or

19          “(vii) in the case of a remedial action  
20          to be undertaken solely under section 104  
21          using the Fund, a selection of a remedial  
22          action that attains such level or standard  
23          of control will not provide a balance be-  
24          tween the need for protection of public  
25          health and welfare and the environment at

1           the facility under consideration, and the  
2           availability of amounts from the Fund to  
3           respond to other facilities which present or  
4           may present a threat to public health or  
5           welfare or the environment, taking into  
6           consideration the relative immediacy of  
7           such threat.

8           The President shall publish such findings, to-  
9           gether with an explanation and appropriate doc-  
10          umentation.”.

11 **SEC. 503. REMEDY SELECTION.**

12          Section 121(b) of the Act (42 U.S.C. 9621(b) is  
13 amended to read as follows:

14          “(b) GENERAL RULES.—

15               “(1) SELECTION OF PROTECTIVE REMEDIES.—

16          Remedies selected at individual facilities shall be  
17          protective of human health and the environment.

18          Whether a response action requires remediation  
19          through treatment, containment, a combination of  
20          treatment and containment, or other means, shall be  
21          determined through the evaluation of remedial alter-  
22          natives.

23               “(2) LAND USE.—In selecting a remedy, the  
24          President shall take into account the reasonably an-

1 anticipated future uses of land at a facility as required  
2 by this Act.

3 “(3) APPROPRIATE REMEDIAL ACTION.—

4 “(A) The President shall identify and se-  
5 lect an appropriate remedy utilizing treatment,  
6 containment, other remedial measures, or any  
7 combination thereof, that is protective of  
8 human health and the environment and  
9 achieves the degree of cleanup determined  
10 under section 121(d), taking into account the  
11 following factors—

12 “(i) the effectiveness of the remedy;

13 “(ii) the long-term reliability of the  
14 remedy, that is, its capability to achieve  
15 long-term protection of human health and  
16 the environment;

17 “(iii) any risk posed by the remedy to  
18 the affected community, to those engaged  
19 in the cleanup effort, and to the environ-  
20 ment;

21 “(iv) the acceptability of the remedy  
22 to the affected community; and

23 “(v) the reasonableness of the cost of  
24 the remedy in relation to the preceding  
25 factors (i) and (iv).

1           “(B) INNOVATIVE REMEDIES.—If an oth-  
2           erwise appropriate treatment remedy is avail-  
3           able only at a disproportionate cost and the  
4           President determines that an appropriate treat-  
5           ment remedy is likely to become available with-  
6           in a reasonable period of time, the President  
7           may select an interim containment remedy. A  
8           selected interim containment remedy shall in-  
9           clude adequate monitoring to ensure the contin-  
10          ued integrity of the containment system. If an  
11          appropriate treatment remedy becomes available  
12          within that period of time, that remedy shall be  
13          required.

14          “(C) HOT SPOTS.—In evaluating a facility  
15          for a permanent containment remedy, if the  
16          President determines, based on standard site  
17          investigation, that a discrete area within a facil-  
18          ity is a “hot spot” (as defined in this para-  
19          graph), the President shall select a remedy for  
20          the hot spot with a preference for treatment,  
21          unless he determines, based on treatability  
22          studies and other information, that no treat-  
23          ment technology exists or such technology is  
24          only available at a disproportionate cost. In  
25          such instances, the President shall select an in-

1           terim containment remedy for a hot spot sub-  
2           ject to adequate monitoring to ensure its con-  
3           tinued integrity and shall review the interim  
4           containment remedy within five years to deter-  
5           mine whether an appropriate treatment remedy  
6           for the hot spot is available. For purposes of  
7           this paragraph, the term “hot spot” means a  
8           discrete area within a facility that contains haz-  
9           ardous substances that are highly toxic or high-  
10          ly mobile, cannot be reliably contained, and  
11          present a significant risk to human health or  
12          the environment should exposure occur.

13           “(4) GENERIC REMEDIES.—In order to stream-  
14          line the remedy selection process, and to facilitate  
15          rapid voluntary action, the President shall establish,  
16          taking into account the factors enumerated in sub-  
17          section (b)(3)(A), cost-effective generic remedies for  
18          categories of facilities, and expedited procedures that  
19          include community involvement for selecting generic  
20          remedies at an individual facility. To be eligible for  
21          selection at a facility, a generic remedy shall be pro-  
22          tective of human health and the environment at that  
23          facility. When appropriate, the President may select  
24          a generic remedy without considering alternative  
25          remedies.”.



1 **SEC. 504. MISCELLANEOUS AMENDMENTS TO SECTION 121.**

2 (a) Section 121(c) of the Act (42 U.S.C. 9621(c))  
3 is amended by striking out the word “initiation”, and in-  
4 serting in lieu thereof the phrase “completion of all phys-  
5 ical on-site construction”.

6 (b) Section 121(d) of the Act is further amended  
7 by—

8 (1) redesignating paragraph (2)(C)(ii) as para-  
9 graph “(6)(A)”;

10 (2) redesignating paragraph (2)(C)(iii) as para-  
11 graph “(6)(B)”;

12 (3) striking “clauses (iii) and (iv)” in redesi-  
13 gnated paragraph (6)(A) and inserting “subpara-  
14 graph (B)”;

15 (4) striking paragraph (2)(C)(iv);

16 (5) redesignating paragraph (3) as paragraph  
17 “(7)” and amending it to read as follows:

18 “(7) In the case of any removal or remedial action  
19 involving the transfer of any hazardous substance or pol-  
20 lutant or contaminant off-site, such hazardous substance  
21 or pollutant or contaminant and shall be transferred to  
22 a facility which is authorized under applicable Federal and  
23 State law to receive such hazardous substance or pollutant  
24 or contaminant and is in compliance with such applicable  
25 Federal and State law. Such substance or pollutant or  
26 contaminant may be transferred to a land disposal facility

1 permitted under subtitle C of the Solid Waste Disposal  
2 Act only if the President determines that both of the fol-  
3 lowing requirements are met:

4           “(A) The unit to which the hazardous sub-  
5 stance or pollutant or contaminant is transferred is  
6 not releasing any hazardous waste, or constituent  
7 thereof, into the groundwater or surface water or  
8 soil.

9           “(B) All such releases from other units at the  
10 facility are being controlled by a corrective action  
11 program approved by the Administrator under sub-  
12 title C of the Solid Waste Disposal Act.

13 The President shall notify the owner or operator of such  
14 facility of determinations made under this paragraph.”;  
15 and

16           (6) striking paragraph (4).

17           (c) Section 121(e) of the Act (42 U.S.C. 9621(e)) is  
18 amended by—

19           (1) in paragraph (1) inserting in the first sen-  
20 tence “or permit application” before “shall be re-  
21 quired”; and by adding at the end thereof the follow-  
22 ing: “Furthermore, no Federal, State or local permit  
23 or permit application shall be required for one-site  
24 or off-site activities conducted under section  
25 311(b),”; and

1 (2) striking paragraph (2).

2 (d) Section 121(f) of the Act (42 U.S.C. 9621(f)) is  
3 amended by adding after paragraph (3) (as amended by  
4 this Act) the following new paragraph:

5 “(4) A State may enforce only those Federal or State  
6 legally applicable standards, requirements, criterion, or  
7 limitations to which the Administrator has determined the  
8 remedial action is required to conform under this Act.  
9 Where the parties agree, the consent decree may provide  
10 for administrative enforcement. Each consent decree shall  
11 also contain stipulated penalties for violations of the de-  
12 cree in an amount not to exceed \$25,000 per day. Such  
13 stipulated penalties shall not be construed to impair or  
14 affect the authority of the court to order compliance with  
15 the specific terms of any such decree.”.

16 **SEC. 505. RESPONSE AUTHORITIES.**

17 (a) Section 104(b)(1) of the Act (42 U.S.C.  
18 9604(b)(1)) is amended by—

19 (1) inserting “actions,” before “studies”;

20 (2) striking “, to recover the costs thereof, and”  
21 and inserting “or”; and

22 (3) striking the “.” after “Act” and inserting  
23 “and shall be entitled to recover the costs thereof.”.

24 (b) Section 104(j) of the Act (42 U.S.C. 9604(j)) is  
25 amended by—

1           (1) in paragraph (1) by striking “remedial”,  
2           and inserting “response”;

3           (2) striking paragraph (2);

4           (3) redesignating paragraph (3) as paragraph  
5           “(2)” and striking “estate” and inserting “prop-  
6           erty”; and

7           (4) by inserting after paragraph (2) (as redesign-  
8           ated by this Act) the following new paragraph:

9           “(4) DISPOSAL AUTHORITY.—The President is au-  
10          thorized to dispose of any interest in real property ac-  
11          quired for use by the Administrator under this subsection  
12          by sale, exchange, donation or otherwise and any such in-  
13          terest in real property shall not be subject to any of the  
14          provisions of section 120 except the notice provisions of  
15          section 120(h)(1). Any moneys received by the President  
16          pursuant to this subparagraph shall be deposited in the  
17          Fund.”.

18   **SEC. 506. REMOVAL ACTIONS.**

19          (a) Section 104(c)(1) of the Act is amended in sub-  
20          paragraph (C) as follows:

21               (1)     strike     “\$2,000,000”     and     insert  
22               “\$6,000,000”;

23               (2)     strike     “12 months”     and     insert     “three  
24               years”; and

1           (3) strike “consistent with the remedial action  
2           to be taken” and insert “not inconsistent with any  
3           remedial action that has been selected or is antici-  
4           pated at the time of the removal action.”;

5           (b) Section 117 of the Act is amended by adding after  
6           subsection (k) (as added by this Act) the following new  
7           subsection:

8           “(1) REMOVAL ACTIONS.—Whenever the planning  
9           period for a removal action is expected to be greater than  
10          six months, the Administrator shall provide the commu-  
11          nity with notice of the anticipated removal action and a  
12          public comment period of no less than thirty days.”.

13       **SEC. 507. TRANSITION.**

14          The provisions of this title shall become effective on  
15          the date of enactment of this Act and shall apply to all  
16          response actions for which a Record of Decision or other  
17          decision document is signed after the date of enactment  
18          of the Act.

19                       **TITLE VI—MISCELLANEOUS**

20       **SEC. 601. INTERAGENCY AGREEMENTS AT MIXED OWNER-**  
21                       **SHIP AND MIXED RESPONSIBILITY FACILI-**  
22                       **TIES.**

23          Section 120(e) of the Act (42 U.S.C. 9620(e)) is  
24          amended by—

1 (a) inserting after paragraph (3) the following  
2 new paragraph:

3 “(4) A provision allowing for the participation  
4 of other responsible parties in the response action.;  
5 and

6 (b) inserting after paragraph (6) the following  
7 new paragraphs:

8 “(7) EXCEPTION TO REQUIRED ACTION.—No  
9 department, agency, and instrumentality of the  
10 United States that owns or operates a facility over  
11 which the department, agency, or instrumentality ex-  
12 ercised no regulatory or other control over activities  
13 that directly or indirectly resulted in a release or  
14 threat of a release of a hazardous substance shall be  
15 subject to the requirements of paragraphs (1)  
16 through (6) except (5)(F) and (G) of this subsection  
17 if the department, agency, or instrumentality dem-  
18 onstrates to the satisfaction of the Administrator  
19 that—

20 “(A) no department, agency, or instrumen-  
21 tality was the primary or sole source or cause  
22 of a release or threat of release of a hazardous  
23 substance at the facility;

24 “(B) the activities either directly or indi-  
25 rectly resulting in a release or threat of a re-

1           lease of a hazardous substance at the facility  
2           were pursuant to a statutory authority and oc-  
3           curred prior to 1976; and

4           “(C) the person or persons primarily or  
5           solely responsible for such release or threat of  
6           release are financially viable, and capable of  
7           performing or financing the response action at  
8           the facility.

9           In the event the above conditions are not met, the  
10          applicable terms of section 120(e) apply to the de-  
11          partment, agency, or instrumentality of the United  
12          States at the facility. Upon determination by the  
13          Administrator that a department, agency, or instru-  
14          mentality qualifies for the exception provided by this  
15          paragraph, the head of such department, agency, or  
16          instrumentality may exercise enforcement authority  
17          pursuant under section 106 (in addition to any other  
18          delegated authorities). To the extent a person who  
19          has been issued an order under the authority of this  
20          paragraph seeks reimbursement under the provisions  
21          of section 106, the relevant department, agency, or  
22          instrumentality, and not the Fund, shall be the  
23          source of any appropriate reimbursement. If the Ad-  
24          ministrator determines that the relevant department,  
25          agency, or instrumentality has failed to seek the per-

1       formance of response actions by responsible parties  
2       within 12 months after the facility has been listed  
3       on the National Priorities List, the Administrator  
4       may void the exception provided by this paragraph  
5       and the applicable provisions or section 120(e) would  
6       apply to the department, agency or instrumentality  
7       at the facility.

8       **SEC. 602. TRANSFERS OF UNCONTAMINATED PROPERTY.**

9       Section 120(h)(4)(A) of the Act (42 U.S.C.  
10       9620(h)(4)(A)) is amended by striking the words “stored  
11       for one year or more,”.

12       **SEC. 603. AGREEMENTS TO TRANSFER BY DEED.**

13       Section 120(h) of the Act (42 U.S.C. 9620(h)) is  
14       amended by adding after paragraph (5) the following new  
15       paragraph:

16               “(6) AGREEMENTS TO TRANSFER BY DEED.—  
17       Nothing in this subsection shall be construed to pro-  
18       hibit the head of the department, agency, or instru-  
19       mentality of the United States from entering into an  
20       agreement to transfer by deed real property or facili-  
21       ties prior to the entering of such deed.”.

22       **SEC. 604. ALTERNATIVE OR INNOVATIVE TREATMENT**  
23               **TECHNOLOGIES.**

24       Section 111(a) of the Act of 1980 is amended by add-  
25       ing after paragraph (6) the following new paragraph:



1           “(7) ALTERNATIVE OR INNOVATIVE TREAT-  
2       MENT TECHNOLOGIES.—

3           “(A) When a party potentially liable under  
4       this Act undertakes a response action pursuant  
5       to an administrative order or consent decree,  
6       and employs an alternative or innovative tech-  
7       nology that fails to achieve a level of response  
8       required under this Act, the Administrator may  
9       use the Fund to reimburse no more than 50  
10      percent of response costs incurred by the poten-  
11      tially liable party in taking other actions ap-  
12      proved by the Administrator to achieve these  
13      required levels of response. The Administrator  
14      shall issue guidance on the procedures and cri-  
15      teria to be used in determining whether a reme-  
16      dial technology constitutes an alternative or in-  
17      novative technology for purposes of this sub-  
18      section, and the appropriate level of funding for  
19      response activities that are necessary to achieve  
20      a level of response required under this Act. The  
21      Administrator shall review and update such  
22      guidance, as appropriate.”.

23   **SEC. 605. DEFINITIONS.**

24       Section 101 of the Act (42 U.S.C. 9601)) is amended  
25   by—

1 (a) in paragraph (1) striking the “.” after  
2 “Act” and inserting “and includes the cost of en-  
3 forcement activities related thereto.”;

4 (b) in paragraph (10)(H) striking “subject to”  
5 and inserting “in compliance with”;

6 (c) in paragraph (14)) inserting after “Con-  
7 gress” the phrase “, unless such waste contains a  
8 substance that is listed under any other subpara-  
9 graph of this paragraph”;

10 (d) in paragraph (20) by—

11 (1) in subparagraph (A) inserting after  
12 “similar means to” the phrase “the United  
13 States (or any department, agency, or instru-  
14 mentality thereof), or”;

15 (2) in subparagraph (D) by inserting—

16 (A) after “does not include” the  
17 phrase “the United States (or any depart-  
18 ment, agency, or instrumentality thereof),  
19 or”; and,

20 (B) before “any State” the phrase  
21 “any department, agency, or instrumental-  
22 ity of the United States, or”; and

23 (3) in subparagraph (D) by striking “a”  
24 after “such” and inserting “department, agen-  
25 cy, or instrumentality of the United States, or”;

1           (4) by adding after subparagraph (D) the  
2 following new subparagraphs:

3           “(E) The term ‘owner or operator’ shall  
4 include a trust or estate, but does not include  
5 a person who holds title to a vessel or facility  
6 solely in the capacity as a fiduciary, provided  
7 that such person—

8                   “(i) does not participate in the man-  
9 agement of a vessel or facility operations  
10 that result in a release or threat of release  
11 of hazardous substances; and

12                   “(ii) complies with such other require-  
13 ments as the Administrator may set forth  
14 by regulation.

15           “(F) The term ‘owner or operator’ shall  
16 not include the United States or any depart-  
17 ment, agency or instrumentality of the United  
18 States or a conservator or receiver appointed by  
19 a department, agency or instrumentality of the  
20 United States, which acquired ownership or  
21 control of a vessel or facility (or any right or  
22 interest therein)—

23                   “(i) in connection with the exercise of  
24 receivership or conservatorship authority  
25 or the liquidation or winding up of the af-

1           fairs of any entity subject to a receivership  
2           or conservatorship, including any subsidi-  
3           ary thereof; or

4           “(ii) in connection with the exercise of  
5           any seizure or forfeiture authority; or

6           “(iii) pursuant to an act of Congress  
7           specifying the property to be acquired:

8           *Provided*, That the United States, or conserva-  
9           tor or receiver appointed by the United States  
10          does not participate in the management of the  
11          vessel or facility operations that result in a re-  
12          lease or threat of release of hazardous sub-  
13          stances and complies with such other require-  
14          ments as the Administrator may set forth by  
15          regulation.”;

16          (e) in paragraph (23) adding at the end of the  
17          paragraph the following “The terms ‘remove’ or ‘re-  
18          moval’ are not limited to emergency situations and  
19          include actions to address future or potential expo-  
20          sures and, provided such actions are consistent with  
21          the requirements of this Act, actions obviating the  
22          need for a remedial action.”;

23          (f) in paragraph (25) striking “related thereto”,  
24          and inserting “and oversight activities related there-

1 to when such activities are undertaken by the Presi-  
2 dent.”;

3 (g) in paragraph (29) striking the “.” after  
4 “Act” and inserting “, except that the term “haz-  
5 arduous substance” shall be substituted for the term  
6 “hazardous waste” in the definitions of “disposal”  
7 and “treatment.”;

8 (h) in paragraph (33) striking “; except that  
9 the”, and inserting “. The”;

10 (i) adding after paragraph (38) the following  
11 new paragraphs:

12 “(39) BONA FIDE PROSPECTIVE PURCHASER.—  
13 The term ‘bona fide prospective purchaser’ means a  
14 person who acquires ownership of a facility after en-  
15 actment of this provision, and who can establish by  
16 a preponderance of the evidence that—

17 “(A) all active disposal of hazardous sub-  
18 stances at the facility occurred before that per-  
19 son acquired the facility;

20 “(B) the person conducted a site audit of  
21 the facility in accordance with commercially  
22 reasonable and generally accepted standards  
23 and practices. The Administrator shall have au-  
24 thority to develop standards by guidance or reg-  
25 ulation, or to designate standards promulgated

1 or developed by others, that satisfy this sub-  
2 paragraph. In the case of property for residen-  
3 tial or other similar use, a site inspection and  
4 title search that reveal no basis for further in-  
5 vestigation satisfy the requirements of this sub-  
6 paragraph;

7 “(C) the person provided all legally re-  
8 quired notices with respect to the discovery or  
9 release of any hazardous substances at the fa-  
10 cility;

11 “(D) the person exercised due care with re-  
12 spect to hazardous substances found at the fa-  
13 cility and took reasonably necessary steps to ad-  
14 dress any release or threat of release of hazard-  
15 ous substances and to protect human health  
16 and the environment. The requirements of due  
17 care and reasonably necessary steps with re-  
18 spect to hazardous substances discovered at the  
19 facility shall be conclusively established where  
20 the person successfully completes a response ac-  
21 tion pursuant to a State voluntary response  
22 program, as defined in section 127 of this title;  
23 and

24 “(E) the person provides full cooperation,  
25 assistance, and facility access to those respon-

1           sible for response actions at the facility, includ-  
2           ing the cooperation and access necessary for the  
3           installation, integrity, operation, and mainte-  
4           nance of any complete or partial response ac-  
5           tion at the facility; and

6           “(F) the person is not affiliated with any  
7           other person liable for response costs at the fa-  
8           cility, through any direct or indirect familial re-  
9           lationship, or any contractual, corporate, or fi-  
10          nancial relationship other than that created by  
11          the instruments by which title to the facility is  
12          conveyed or financed.

13          “(40) FIDUCIARY.—

14               “(A) Except as provided in subparagraph  
15               (B), the term ‘fiduciary’ means a person who  
16               owns or controls property—

17                       “(i) as a fiduciary within the meaning  
18                       of section 3(31) of the Employee Retire-  
19                       ment Income Security Act of 1974, or as  
20                       a trustee, executor, administrator, custo-  
21                       dian, guardian, conservator, or receiver  
22                       acting for the exclusive benefit of another  
23                       person; and

1           “(ii) who has not previously owned or  
2           operated the property in a non-fiduciary  
3           capacity.

4           “(B) The term ‘fiduciary’ does not include  
5           any person described in subparagraph (A)—

6           “(i) who acquires ownership or control  
7           of property to avoid the liability of such  
8           person or any other person under this Act;  
9           or

10          “(ii) who owns or controls property on  
11          behalf of or for the benefit of a holder of  
12          a security interest.

13          “(41) MUNICIPAL SOLID WASTE.—The term  
14          ‘municipal solid waste’ means all waste materials  
15          generated by households, including single and multi-  
16          family residences, and hotels and motels. The term  
17          also includes waste materials generated by commer-  
18          cial, institutional, and industrial sources, to the ex-  
19          tent such wastes (A) are essentially the same as  
20          waste normally generated by households or (B) were  
21          collected and disposed of with other municipal solid  
22          waste or sewage sludge as part of normal municipal  
23          solid waste collection services, and, regardless of  
24          when generated, would be considered conditionally  
25          exempt small quantity generator waste under section



1       3001(d) of the Solid Waste Disposal Act (42 U.S.C.  
2       6921(d)). Examples of municipal solid waste include  
3       food and yard waste, paper, clothing, appliances,  
4       consumer product packaging, disposable diapers, of-  
5       fice supplies, cosmetics, glass and metal food con-  
6       tainers, elementary or secondary school science lab-  
7       oratory waste, and household hazardous waste (such  
8       as painting, cleaning, gardening, and automotive  
9       supplies). The term ‘municipal solid waste’ does not  
10      include combustion ash generated by resource recov-  
11      ery facilities or municipal incinerators, or waste  
12      from manufacturing or processing (including pollu-  
13      tion control) operations not essentially the same as  
14      waste normally generated by households.

15           “(42) MUNICIPALITY.—The term ‘municipality’  
16      means a political subdivision of a State, including  
17      cities, counties, villages, towns, townships, boroughs,  
18      parishes, school districts, sanitation districts, water  
19      districts, and other public entities performing local  
20      governmental functions. The term also includes a  
21      natural person acting in the capacity of an official,  
22      employee, or agent of a municipality in the perform-  
23      ance of governmental functions.

24           “(43) QUALIFIED HOUSEHOLD HAZARDOUS  
25      WASTE COLLECTION PROGRAM.—The term ‘qualified

1 household hazardous waste collection program’  
2 means a program established by an entity of the fed-  
3 eral government, a state, municipality, or Indian  
4 tribe that provides, at a minimum, for semiannual  
5 collection of household hazardous wastes at acces-  
6 sible, well-publicized collection points within the rel-  
7 evant jurisdiction.

8 “(44) SEWAGE SLUDGE.—The term ‘sewage  
9 sludge’ means solid, semisolid, or liquid residue re-  
10 moved during the treatment of municipal waste  
11 water, domestic sewage, or other waste water at or  
12 by publicly-owned or federally-owned treatment  
13 works.

14 “(45) SITE CHARACTERIZATION.—The term  
15 ‘site characterization’ means an investigation that  
16 determines the nature and extent of a release or po-  
17 tential release of a hazardous substance, pollutant or  
18 contaminant, and that includes an on-site evaluation  
19 and sufficient testing, sampling and other field data  
20 gathering activities to analyze whether there has  
21 been a release or threat of a release of a hazardous  
22 substance, pollutant or contaminant, and the health  
23 and environmental risks posed by such a release or  
24 threat of release. The investigation also may include  
25 review of existing information (available at the time

1 of the review), an off-site evaluation, or other meas-  
2 ures as the Administrator deems appropriate.

3 “(46) VOLUNTARY RESPONSE.—The term ‘vol-  
4 untary response’ means a response action—

5 “(A) undertaken and financed by a current  
6 owner or prospective purchaser under a vol-  
7 untary response program; and

8 “(B) with respect to which the current  
9 owner or prospective purchaser agrees to pay all  
10 State oversight costs.”.

11 **SEC. 606. CONFORMING AMENDMENT.**

12 Section 126(a) of the Act (42 U.S.C. 9626(a)) is  
13 amended by adding, after “section 104(i) (regarding  
14 health authorities),” the phrase “section 127 (regarding  
15 State authority), section 120 (regarding voluntary re-  
16 sponse actions),”.

17 **TITLE VII—FUNDING**

18 **SEC. 701. AUTHORIZATION OF APPROPRIATIONS.**

19 Section 111(a) of the Act is amended by striking  
20 “\$8,500,000,000 for the 5-year period beginning on Octo-  
21 ber 17, 1986, and not more than \$5,100,000,000 for the  
22 period commencing October 1, 1991, and ending Septem-  
23 ber 30, 1994” and inserting “\$9,600,000,000 for the pe-  
24 riod commencing October 1, 1994 and ending September  
25 30, 1999”.

1 **SEC. 702. ORPHAN SHARE FUNDING.**

2 Section 111(a) is amended by adding after paragraph  
3 (7) (as added by this Act) the following new paragraph:

4 “(8) ORPHAN SHARE FUNDING.—Payment of  
5 orphan shares pursuant to section 122a(e) of this  
6 Act.”.

7 **SEC. 703. AGENCY FOR TOXIC SUBSTANCES AND DISEASE**  
8 **REGISTRY.**

9 Section 111(m) of the Act is amended to read as fol-  
10 low:

11 “(m) There shall be directly available to the Agency  
12 for Toxic Substances and Disease Registry to be used for  
13 the purpose of carrying out activities described in sub-  
14 section (c)(4) of this section and section 104(i) of this Act  
15 not less than \$80,000,000 per fiscal year for each of fiscal  
16 years 1995, 1996, 1997, 1998, and 1999. Any funds so  
17 made available which are not obligated by the end of the  
18 fiscal year in which made available shall be returned to  
19 the Fund.”.

20 **SEC. 704. LIMITATIONS ON RESEARCH, DEVELOPMENT,**  
21 **AND DEMONSTRATION PROGRAMS.**

22 Section 111(n) of the Act is amended to read as fol-  
23 lows:

24 “(1) SECTION 311(b).—For each of the fiscal  
25 years 1995, 1996, 1997, 1998, and 1999, not more  
26 than \$20,000,000 of the amounts available in the

1 Fund may be used for the purposes of carrying out  
2 the applied research, development, and demonstra-  
3 tion program for alternative or innovative tech-  
4 nologies and training program authorized under sec-  
5 tion 311(b) of this title (relating to research, devel-  
6 opment, demonstration) other than basic research.  
7 Such amounts shall remain available until expended.

8 “(2) SECTION 311(a).—From the amounts avail-  
9 able in the Fund, not more than the following  
10 amounts may be used for the purposes of section  
11 311(a) of this title (relating to hazardous substance  
12 research, demonstration, and training activities)—

13 “(A) For fiscal year 1995 \$40,000,000,

14 “(B) For fiscal year 1996 \$50,000,000,

15 “(C) For fiscal year 1997 \$55,000,000,

16 “(D) For fiscal year 1998 \$55,000,000,

17 “(E) For fiscal year 1999 \$55,000,000,

18 No more than 10 percent of such amounts shall be  
19 used for training under section 311(a) of this title  
20 for any fiscal year.

21 “(3) SECTION 311(d).—For each of the fiscal  
22 years 1995, 1996, 1997, 1998, and 1999, not more  
23 than \$5,000,000 of the amounts available in the  
24 Fund may be used for the purposes of section

1        311(d) of this title (relating to university hazardous  
2        substance research centers).”.

3        **SEC. 705. AUTHORIZATION OF APPROPRIATIONS FROM**  
4        **GENERAL REVENUES.**

5        Section 111(p)(1) of the Act is amended to read as  
6        follows:

7                “(1) IN GENERAL.—The following sums are au-  
8        thorized to be appropriated, out of any money in the  
9        Treasury not otherwise appropriated, to the Hazard-  
10       ous Substance Superfund:

11                “(A) For fiscal year 1995 \$250,000,000,

12                “(B) For fiscal year 1996 \$250,000,000,

13                “(C) For fiscal year 1997 \$250,000,000,

14                “(D) For fiscal year 1998 \$250,000,000,

15                “(E) For fiscal year 1999 \$250,000,000,

16        In addition there is authorized to be appropriated to  
17        the Hazardous Substance Superfund for each fiscal  
18        year an amount equal to so much of the aggregate  
19        amount authorized to be appropriated under this  
20        subsection (and paragraph (2) of section 131(b) of  
21        this title) as has not been appropriated before the  
22        beginning of the fiscal year involved.”.

23        **SEC. 706. ADDITIONAL LIMITATIONS.**

24        Section 111 of the Act is amended by adding after  
25        subsection (p) the following new subsections:

1       “(q) ALTERNATIVE OR INNOVATIVE TREATMENT  
2 TECHNOLOGIES.—For each of the fiscal years 1995,  
3 1996, 1997, 1998, and 1999, not more than \$40,000,000  
4 of the amounts available in the Fund may be used for the  
5 purposes of subsection (a)(7) of this section (relating to  
6 alternative or innovative treatment technologies).

7       “(r) CITIZEN INFORMATION AND ACCESS OF-  
8 FICES.—For each of the fiscal years 1995, 1996, 1997,  
9 1998, and 1999, not more than \$50,000,000 of the  
10 amounts available in the Fund may be used for the pur-  
11 poses of section 117(j) of this Act (relating to citizen in-  
12 formation and access offices).

13       “(s) MULTIPLE SOURCES OF RISK DEMONSTRATION  
14 PROJECTS.—For the period commencing October 1, 1994  
15 and ending September 30, 1999, not more than  
16 \$30,000,000 of the amounts available in the Fund may  
17 be used for the purposes of section 117(k) of this Act (re-  
18 lating to multiple sources of risk demonstration  
19 projects).”.

20       **TITLE VIII—ENVIRONMENTAL INSURANCE**  
21                               **RESOLUTION FUND**

22       **SEC. 801. SHORT TITLE.**

23       This title may be cited as the “Environmental Insur-  
24 ance Resolution and Equity Act of 1994”.

1 **SEC. 802. ENVIRONMENTAL INSURANCE RESOLUTION**  
2 **FUND.**

3 (a) ENVIRONMENTAL INSURANCE RESOLUTION  
4 FUND ESTABLISHED.—There is hereby established the  
5 Environmental Insurance Resolution Fund (hereinafter  
6 referred to as the “Resolution Fund”).

7 (b) OFFICES.—The principal office of the Resolution  
8 Fund shall be in the District of Columbia or at such other  
9 place as the Resolution Fund may from time to time pre-  
10 scribe.

11 (c) STATUS OF RESOLUTION FUND.—Except as ex-  
12 pressly provided in this title, the Resolution Fund shall  
13 not be considered an agency or establishment of the Unit-  
14 ed States. The members of the Board of Trustees shall  
15 not, by reason of such membership, be deemed to be offi-  
16 cers or employees of the United States.

17 (d) BOARD OF TRUSTEES.—

18 (1) IN GENERAL.—The Resolution Fund shall  
19 be administered by a Board of Trustees (Board).

20 (2) MEMBERSHIP.—The Board shall consist  
21 of—

22 (A) GOVERNMENTAL MEMBERS.—

23 (i) The Administrator of the Environ-  
24 mental Protection Agency.

25 (ii) The Attorney General of the Unit-  
26 ed States.



1 (B) PUBLIC MEMBERS.—Five public mem-  
2 bers appointed by the President not later than  
3 60 days after the date of enactment of this  
4 title, not less than two of whom shall represent  
5 insurers subject to section of the Inter-  
6 nal Revenue Code of 1986, and not less than  
7 two of whom shall represent eligible persons de-  
8 fined in subsection (g)(2)(A). The public mem-  
9 bers shall be citizens of the United States.

10 (C) EX-OFFICIO MEMBER.—The Secretary  
11 of the Treasury shall serve as an ex officio  
12 member of the Board.

13 (3) CHAIR.—The Chair of the Board shall be  
14 designated by the President from time to time from  
15 among the members described in paragraph (2)(A).  
16 No expenditure may be made, or other action taken,  
17 by the Resolution Fund without the concurrence of  
18 the Chair of the Board.

19 (4) COMPENSATION.—Governmental members  
20 of the Board shall serve without additional com-  
21 pensation. Public members of the Board shall, while  
22 attending meetings of the Board or while engaged in  
23 duties related to such meetings or other activities of  
24 the Board pursuant to this title, be entitled to re-  
25 ceive compensation at the rate of \$200 per day, in-

1 cluding travel time. While away from their homes or  
2 regular places of business, members of the Board  
3 shall be allowed travel and actual, reasonable and  
4 necessary expenses to the same extent as officers of  
5 the United States.

6 (5) TERM OF PUBLIC MEMBERS.—Public mem-  
7 bers of the Board shall serve for a term of 5 years,  
8 except that such members may be removed by the  
9 President for any reason at any time. A public mem-  
10 ber whose term has expired may continue to serve  
11 on the Board until such time as the President ap-  
12 points a successor. The President may reappoint a  
13 public member of the Board, but no such member  
14 may consecutively serve more than two terms.

15 (6) VACANCIES.—A vacancy on the Board shall  
16 be filled in the same manner as the original appoint-  
17 ment, except that such appointment shall be for the  
18 balance of the unexpired term of the vacant position.

19 (7) QUORUM.—Four members of the Board  
20 shall constitute a quorum for the conduct of busi-  
21 ness.

22 (8) MEETINGS.—The Board shall meet not less  
23 than quarterly at the call of the Chair. Meetings of  
24 the Board shall be open to the public unless the  
25 Board, by a majority vote of members present in

1 open session, determines that it is necessary or ap-  
2 propriate to close a meeting. The Chair shall provide  
3 at least 10 days notice of a meeting by publishing  
4 a notice in the Federal Register and such notice  
5 shall indicate whether it is expected that the Board  
6 will consider closing all or a portion of the meeting.  
7 Nothing in this paragraph shall be construed to  
8 apply to informal discussions or meetings among  
9 Board members.

10 (e) OFFICERS AND EMPLOYEES.—

11 (1) CHIEF EXECUTIVE OFFICER; CHIEF FINAN-  
12 CIAL OFFICER.—

13 (A) The Resolution Fund shall have a  
14 Chief Executive Officer appointed by the Board  
15 who shall exercise any authority of the Resolu-  
16 tion Fund under such terms and conditions as  
17 the Board may prescribe.

18 (B) The Resolution Fund shall have a  
19 Chief Financial Officer appointed by the Board.

20 (2) COMPENSATION.—No officer or employee of  
21 the Resolution Fund may be compensated by the  
22 Resolution Fund at an annual rate of pay which ex-  
23 ceeds the rate of basic pay in effect from time to  
24 time for level I of the Executive Schedule under sec-  
25 tion 5312 of title 5, United States Code. No officer

1 or employee of the Resolution Fund, other than a  
2 member of the Board, may receive any salary or  
3 other compensation from any source other than the  
4 Resolution Fund for services rendered during the pe-  
5 riod of employment by the Resolution Fund.

6 (3) POLITICAL TEST OR QUALIFICATION.—No  
7 political test or qualification shall be used in select-  
8 ing, appointing, promoting, or taking other person-  
9 nel actions with respect to officers, agents, and em-  
10 ployees of the Resolution Fund.

11 (4) ASSISTANCE BY FEDERAL AGENCIES.—The  
12 Attorney General, the Secretary of the Treasury,  
13 and the Administrator of the Environmental Protec-  
14 tion Agency, may to the extent practicable and fea-  
15 sible, and in their sole discretion, make personnel  
16 and other resources available to the Resolution  
17 Fund. Such personnel and resources may be pro-  
18 vided on a reimbursable basis, and any personnel so  
19 provided shall not be considered employees of the  
20 Resolution Fund for purposes of paragraph (2).

21 (f) POWERS OF RESOLUTION FUND.—Notwithstand-  
22 ing any other provision of law, except as provided in this  
23 title or as may be hereafter enacted by the Congress ex-  
24 pressly in limitation of the provisions of this paragraph,  
25 the Resolution Fund shall have power—

1           (1) to have succession until dissolved by Act of  
2 Congress;

3           (2) to make and enforce such bylaws, rules and  
4 regulations as may be necessary or appropriate to  
5 carry out the purposes of this title;

6           (3) to make and perform contracts, agreements,  
7 and commitments;

8           (4) to settle, adjust, and compromise, and with  
9 or without consideration or benefit to the Resolution  
10 Fund release or waive in whole or in part, in ad-  
11 vance or otherwise, any claim, demand, or right of,  
12 by, or against the Resolution Fund;

13           (5) to sue and be sued, complain and defend, in  
14 any State, Federal or other court;

15           (6) to determine its necessary expenditures and  
16 the manner in which the same shall be incurred, al-  
17 lowed, and paid, and appoint, employ, and fix and  
18 provide for the duties, compensation and benefits of  
19 officers, employees, attorneys, and agents, all of  
20 whom shall serve at the pleasure of the Board;

21           (7) to invest funds, through the Secretary of  
22 the Treasury, in interest bearing securities of the  
23 United States suitable to the needs of the Resolution  
24 Fund: *Provided*, That interest earned on such invest-

1       ments shall be retained by the Resolution Fund and  
2       used consistent with the purposes of this title;

3           (8) to hire or accept the voluntary services of  
4       consultants, experts, advisory boards, and panels to  
5       aid the Resolution Fund in carrying out the pur-  
6       poses of this title; and

7           (9) to take such other actions as may be nec-  
8       essary to carry out the responsibilities of the Resolu-  
9       tion Fund under this title. Nothing in this sub-  
10      section or any other provision of this title shall be  
11      construed to permit the Resolution Fund to issue  
12      any evidence of indebtedness or otherwise borrow  
13      money.

14      (g) RESOLUTION OF DISPUTES BETWEEN INSURED  
15      AND INSURERS.—

16           (1) IN GENERAL.—The Resolution Fund shall  
17      offer a comprehensive resolution described in this  
18      subsection with respect to all eligible costs of an eli-  
19      gible person at eligible sites.

20           (2) DEFINITIONS.—

21           (A) ELIGIBLE PERSON.—For purposes of  
22      this subsection, the term “eligible person”  
23      means any individual, firm, corporation, asso-  
24      ciation, partnership, consortium, joint venture,  
25      commercial entity or governmental unit (includ-

1           ing any predecessor in interest or any subsidi-  
2           ary thereof) that satisfies the following criteria:

3                   (i) STATUS AS POTENTIALLY RESPON-  
4                   SIBLE PARTY.—An eligible person—

5                         (I) shall have been named at any  
6                         time as a potentially responsible party  
7                         pursuant to the Comprehensive Envi-  
8                         ronmental Response, Compensation  
9                         and Liability Act with respect to an  
10                        eligible site on the National Priority  
11                        List in connection with a hazardous  
12                        substance that was disposed of on or  
13                        before December 31, 1985; or

14                       (II) is or was liable, or alleged to  
15                        be liable, at any time for removal (as  
16                        defined in section 101(23) of the  
17                        Comprehensive Environmental Re-  
18                        sponse, Compensation and Liability  
19                        Act (42 U.S.C. 9601(23)) at any eligi-  
20                        ble site in connection with a hazard-  
21                        ous substance that was disposed of on  
22                        or before December 31, 1985.

23                       (ii) INSURANCE COVERAGE.—An eligi-  
24                        ble person shall have demonstrated, to the  
25                        satisfaction of the Resolution Fund, that

1 such person had entered into a valid con-  
2 tract for comprehensive general liability  
3 (including broad form liability, general li-  
4 ability, commercial general liability, and  
5 excess or umbrella coverage) or commercial  
6 multi-peril (including broad form property,  
7 commercial package, special multi-peril,  
8 and excess or umbrella coverage) insurance  
9 coverage—

10 (I) for any seven years in any  
11 consecutive 14 year period prior to  
12 January 1, 1986; or

13 (II) in the case of a person that  
14 has been in existence for less than 14  
15 years prior to January 1, 1986, for at  
16 least one-half of such years of exist-  
17 ence.

18 For purposes of this clause, a valid con-  
19 tract for insurance shall not include any  
20 contract for insurance with respect to  
21 which a person has entered into a settle-  
22 ment with an insurer providing, or where  
23 a judgment has provided, that the contract  
24 has been satisfied and that such person



1 has no right to make any further claims  
2 under such contract.

3 (B) ELIGIBLE COSTS.—

4 (i) IN GENERAL.—For purposes of  
5 this subsection, the term “eligible costs”  
6 means costs described in clause (ii) or (iii)  
7 incurred with respect to a hazardous sub-  
8 stance that was disposed of on or before  
9 December 31, 1985—

10 (I) for which an eligible person  
11 has not been reimbursed; or

12 (II) for which an eligible person  
13 has been reimbursed and that are the  
14 subject of a dispute between the eligi-  
15 ble person and an insurer.

16 (ii) NPL SITES.—With respect to an  
17 eligible site described in subparagraph  
18 (C)(i), eligible costs means costs described  
19 in clause (i)—

20 (I) of response (as defined in sec-  
21 tion 101(25) of the Comprehensive  
22 Environmental Response, Compensa-  
23 tion and Liability Act (42 U.S.C.  
24 9601(25));

1 (II) for natural resources dam-  
2 ages; or

3 (III) to defend potential liability  
4 (including, but not limited to, attor-  
5 ney's fees, costs of suit, consultant  
6 and expert fees and costs, and ex-  
7 penses for testing and monitoring).

8 (iii) NON-NPL SITES.—With respect  
9 to an eligible site described in subpara-  
10 graph (C)(ii), eligible costs means costs de-  
11 scribed in clause (i)—

12 (I) of removal (as defined in sec-  
13 tion 101(23) of the Comprehensive  
14 Environmental Response, Compensa-  
15 tion and Liability Act (42 U.S.C.  
16 9601(23)); or

17 (II) to defend potential liability  
18 (including, but not limited to, attor-  
19 ney's fees, costs of suit, consultant  
20 and expert fees and costs, and ex-  
21 penses for testing and monitoring).

22 (iv) LIMIT ON ELIGIBLE COSTS.—

23 (I) Except as provided in  
24 subclause (II), the eligible costs of an  
25 eligible person may not exceed—

1 (aa) \$15,000,000 in the case  
2 of an eligible person that has  
3 demonstrated insurance coverage  
4 pursuant to subparagraph  
5 (A)(ii)(I); or

6 (bb) an amount equal to  
7 one-seventh of \$15,000,000 for  
8 each year of insurance coverage,  
9 in the case of an eligible person  
10 that has demonstrated insurance  
11 coverage pursuant to subpara-  
12 graph (A)(ii)(II).

13 (II) The limitation on eligible  
14 costs provided in subclause (I) shall  
15 not apply to an eligible person that,  
16 when filing a request for a resolution  
17 offer with the Resolution Fund, pre-  
18 sents evidence to the satisfaction of  
19 the Resolution Fund that the limits  
20 on valid contracts of insurance (in-  
21 cluding per occurrence, aggregate, pri-  
22 mary, excess or other limits) of such  
23 eligible person prior to January 1,  
24 1986, cumulatively exceed the amount  
25 determined pursuant to subclause (I)

1 without reference to any time period.  
2 For purposes of this clause, a valid  
3 contract for insurance shall not in-  
4 clude any contract for insurance with  
5 respect to which an eligible person has  
6 entered into a settlement with an in-  
7 surer providing, or where a judgment  
8 has provided, that the contract has  
9 been satisfied and that such eligible  
10 person has no right to make any fur-  
11 ther claims under such contract.

12 (C) ELIGIBLE SITE.—For purposes of this  
13 subsection, the term “eligible site” means—

14 (i) any site or facility placed on the  
15 National Priority List at any time, at  
16 which a hazardous substance was disposed  
17 of on or before December 31, 1985; or

18 (ii) any site or facility subject to a re-  
19 moval (as defined in section 101(23) of the  
20 Act (42 U.S.C. 9601(23)) conducted pur-  
21 suant to such Act at any time, at which a  
22 hazardous substance was disposed of on or  
23 before December 31, 1985.

24 For purposes of this subparagraph, the term  
25 “facility” shall have the same meaning as pro-

1 vided in section 101(9) of the Comprehensive  
2 Environmental Response, Compensation and Li-  
3 ability Act (42 U.S.C. 9601(9)).

4 (D) STATE.—For purposes of this sub-  
5 section, the term “State” shall have the same  
6 meaning as provided in section 101(27) of the  
7 Comprehensive Environmental Response, Com-  
8 pensation and Liability Act (42 U.S.C.  
9 9601(27)).

10 (3) RESOLUTION OFFERS.—

11 (A) IN GENERAL.—The Resolution Fund  
12 shall offer one comprehensive resolution to each  
13 eligible person. The offer shall—

14 (i) be for a percentage of all of the eli-  
15 gible costs of such eligible person incurred  
16 in connection with all eligible sites, deter-  
17 mined pursuant to paragraph (4); and

18 (ii) state the limitation on eligible  
19 costs, if any, applicable to the eligible per-  
20 son pursuant to paragraph (2)(B)(ii).

21 (B) REQUESTS FOR RESOLUTION OF-  
22 FERS.—An eligible person shall file a request  
23 for resolution from the Resolution Fund in such  
24 form and manner as the Resolution Fund shall  
25 prescribe. No such request shall be deemed re-

ceived by the Resolution Fund before the date  
 final regulations concerning State percentage  
 categories are published in the Federal Register  
 pursuant to paragraph 4(B)(iii). The Resolu-  
 tion Fund shall make an offer of resolution, de-  
 termined pursuant to paragraph (4), to each el-  
 igible person that has filed a request for an  
 offer of resolution not later than 180 days after  
 the receipt of a complete request as determined  
 by the Resolution Fund.

(C) REVIEW OF RESOLUTION OFFERS.—

No resolution offer made by the Resolution  
 Fund shall be subject to review by any court.

(4) DETERMINATION OF RESOLUTION OF-  
 FERS.—

(A) IN GENERAL.—The Resolution Fund  
 shall determine a resolution offer—

(i) in the case of an eligible person  
 that has established only one State litiga-  
 tion venue pursuant to subparagraph (C),  
 by applying the State percentage deter-  
 mined pursuant to subparagraph (B)(iii) to  
 the established State litigation venue;

(ii) in the case of an eligible person  
 that has established two or more State liti-

1           gation venues pursuant to subparagraph  
2           (C), each site with respect to which a State  
3           litigation venue has been established shall  
4           be accorded equal value and the applicable  
5           percentage shall be the weighted average of  
6           all established State litigation venues; or

7           (iii) in the case of an eligible person  
8           that has not established any State litigation  
9           venue pursuant to subparagraph  
10          (C)—

11                   (I) if the eligible person has potential  
12                   liability in connection with only  
13                   one hazardous waste site, by applying  
14                   the State percentage determined pursuant  
15                   to subparagraph (B)(iii) to the  
16                   State in which the site is located; or

17                   (II) if the eligible person has potential  
18                   liability in connection with  
19                   more than one hazardous waste site,  
20                   each site shall be accorded equal value  
21                   and the applicable percentage shall be  
22                   the weighted average of all States in  
23                   which the sites are located;

24          (B) STATE PERCENTAGE.—

1 (i) IN GENERAL.—The Congress finds  
2 that as of January 1, 1994, State law gen-  
3 erally is more favorable to eligible persons  
4 that pursue claims concerning eligible costs  
5 against insurers in some States, that State  
6 law generally is more favorable to insurers  
7 with respect to such claims in some States,  
8 and that in some States the law generally  
9 favors neither insurers nor eligible persons  
10 with respect to such claims or that there is  
11 insufficient information to determine  
12 whether such law generally favors insurers  
13 or eligible persons with respect to such  
14 claims. The Congress further finds that  
15 considerations of equity and fairness re-  
16 quire that resolution offers made by the  
17 Resolution Fund must vary to reflect the  
18 relative state of the law among the several  
19 States.

20 (ii) PROPOSED REGULATIONS.—The  
21 Resolution Fund shall examine the law in  
22 each State as of January 1, 1994. Not  
23 later than 120 days after the date of en-  
24 actment of this title, the Resolution Fund  
25 shall publish in the Federal Register a no-



1 tice of proposed rulemaking soliciting pub-  
2 lic comment for 60 days and classifying  
3 States into the following percentage cat-  
4 egories:

5 (I) 20 percent, in the case of the  
6 ten States in which the Resolution  
7 Fund determines that State law gen-  
8 erally is most favorable to insurers  
9 relative to the other States;

10 (II) 60 percent, in the case of the  
11 ten States in which the Resolution  
12 Fund determines that State law gen-  
13 erally is most favorable to eligible per-  
14 sons relative to the other States; and

15 (III) 40 percent, in the case of  
16 all other States.

17 (iii) FINAL REGULATIONS.—

18 (I) Not later than 60 days after  
19 the close of the public comment pe-  
20 riod, the Resolution Fund shall pub-  
21 lish in the Federal Register final reg-  
22 ulations providing State classifica-  
23 tions.

24 (II) The State classifications pro-  
25 vided in the final rule shall govern all

1 resolution offers made by the Resolu-  
2 tion Fund and shall not be subject to  
3 amendment by the Resolution Fund.

4 (III) Notwithstanding any other  
5 provision of law, the final regulations  
6 promulgated by the Resolution Fund  
7 pursuant to this clause shall not be  
8 subject to review by any court.

9 (C) LITIGATION VENUE.—For purposes of  
10 this subsection, litigation venue is considered  
11 established with respect to an eligible person  
12 if—

13 (i) on or before December 31, 1993,  
14 the eligible person had pending in a court  
15 of competent jurisdiction a complaint or  
16 cross complaint against an insurer with re-  
17 spect to eligible costs at an eligible site;  
18 and

19 (ii) no motion to change venue with  
20 respect to such complaint was pending on  
21 or before January 31, 1994.

22 (5) ACCEPTANCE OR REJECTION OF RESOLU-  
23 TION OFFER.—

24 (A) IN GENERAL.—

1 (i) An eligible person may, when sub-  
2 mitting a request for a resolution to the  
3 Resolution Fund, make a written irrev-  
4 ocable election to accept any resolution to  
5 be made by the Resolution Fund.

6 (ii) An eligible person that does not  
7 make an election pursuant to clause (i)  
8 shall, within 60 days of the receipt of a  
9 resolution offer from the Resolution Fund,  
10 notify the Resolution Fund in writing of its  
11 irrevocable acceptance or rejection of such  
12 offer. An eligible person who does not ac-  
13 cept or reject a resolution offer within 60  
14 days shall be deemed to have made an ir-  
15 revocable election to reject the offer and  
16 the provisions of subparagraph (C) shall  
17 apply.

18 (B) RESOLUTION OFFER ACCEPTED.—An  
19 eligible person that accepts a resolution offered  
20 by the Resolution Fund shall be subject to the  
21 provisions of this paragraph.

22 (i) WAIVER OF INSURANCE CLAIMS.—  
23 The Resolution Fund shall not make pay-  
24 ments to an eligible person unless the eligi-

1           ble person agrees in writing, subject to re-  
2           instatement described in clause (ii)—

3                   (I) to waive any existing and fu-  
4                   ture claims against any insurer for eli-  
5                   gible costs; and

6                   (II) to stay or dismiss each claim  
7                   pending against an insurer for eligible  
8                   costs.

9                   (ii) REINSTATEMENT OF INSURANCE  
10           CLAIMS.—

11                   (I) If the Resolution Fund fails  
12                   to timely fulfill its obligations to an  
13                   eligible person under the terms of an  
14                   accepted resolution offer, such eligible  
15                   person shall be entitled to reinstate  
16                   any claim under a contract for insur-  
17                   ance with respect to eligible costs.

18                   (II) STATUTE OF LIMITATION  
19                   TOLLED.—Notwithstanding any other  
20                   provision of Federal or State law, any  
21                   Federal or State statute of limitation  
22                   concerning the filing or prosecution of  
23                   an action by an eligible person against  
24                   an insurer, or by an insurer against  
25                   an eligible person, with respect to eli-

1           gible costs shall be tolled during the  
2           pendency of the stay of pending litigation  
3           established by section 804(a).

4           (iii) PAYMENT OF RESOLUTION OF-  
5           FERS.—

6                   (I) PRE-RESOLUTION COSTS.—

7           The Resolution Fund shall make  
8           equal annual payments over a period  
9           of eight years for eligible costs in-  
10          curred by an eligible person on or be-  
11          fore the date such person accepts a  
12          resolution offer pursuant to subpara-  
13          graph (A) (i) or (ii), and interest shall  
14          not accrue with respect to such eligi-  
15          ble costs. The Resolution Fund may,  
16          in its sole discretion, make such pay-  
17          ments over a shorter period if the ag-  
18          gregate eligible costs do not exceed  
19          \$50,000. An eligible person shall sub-  
20          mit to the Resolution Fund docu-  
21          mentation of such costs as the Resolu-  
22          tion Fund may require. The initial  
23          payment to an eligible person under  
24          this subclause shall be made not later  
25          than 60 days after the receipt of doc-

1           umentation satisfactory to the Resolu-  
2           tion Fund.

3                   (II) POST-RESOLUTION COSTS.—

4           The Resolution Fund shall make pay-  
5           ments for eligible costs incurred by an  
6           eligible person after the date such per-  
7           son accepts a resolution offer pursu-  
8           ant to subparagraph (A) (i) or (ii) to  
9           the eligible person, or to a contractor  
10          or other person designated by the eli-  
11          gible person, subject to such docu-  
12          mentation as the Resolution Fund  
13          may require. Payments under this  
14          subclause shall be made not later than  
15          60 days after the receipt of docu-  
16          mentation satisfactory to the Resolu-  
17          tion Fund.

18                   (III) ADJUSTMENT FOR DEDUCT-

19          IBLE OR SELF INSURANCE.—In the  
20          case of an eligible person that has  
21          submitted to the Resolution Fund, as  
22          proof of status as an eligible person,  
23          a contract for insurance described in  
24          paragraph (2)(A)(ii) that is subject to  
25          a self-insured retention or a deduct-

1           ible, payment to such eligible person  
2           pursuant to a resolution shall be re-  
3           duced by the amount of such self-in-  
4           sured retention or deductible, except  
5           that such reduction shall not exceed  
6           the amount of one self-insured reten-  
7           tion or one deductible that the eligible  
8           person would have been required to  
9           pay with respect to one claim for eligi-  
10          ble costs under the terms of the con-  
11          tracts for insurance submitted. In the  
12          event that the eligible person submit-  
13          ted more than one contract for insur-  
14          ance, any such reduction shall be  
15          made with respect to the lowest of the  
16          amounts of self-insured retentions and  
17          deductibles.

18                   (IV) ADJUSTMENT FOR CERTAIN  
19                   DUTY-TO-DEFEND COSTS.—If an in-  
20                   surer has incurred and paid costs pur-  
21                   suant to a duty-to-defend clause con-  
22                   tained in a contract for insurance de-  
23                   scribed in paragraph (2)(B), and such  
24                   costs are the subject of a dispute be-  
25                   tween the eligible person and an in-

1 surer, the payment of a resolution to  
2 an eligible person shall be reduced by  
3 such amount, and the Resolution  
4 Fund shall pay such amount to the  
5 insurer. If such costs were paid by the  
6 insurer on or before the date the eligi-  
7 ble person accepted a resolution offer  
8 made by the Resolution Fund, pay-  
9 ment to an insurer under this  
10 subclause shall be made in equal an-  
11 nual installments over a period of  
12 eight years, and interest shall not ac-  
13 crue with respect to such costs. The  
14 Resolution Fund may, in its sole dis-  
15 cretion, make such payments over a  
16 shorter period if the aggregate costs  
17 do not exceed \$50,000.

18 (C) RESOLUTION OFFER REJECTED; LITI-  
19 GATION OF INSURANCE CLAIMS.—

20 (i) ADMISSIBILITY OF RESOLUTION  
21 OFFER.—No resolution offered by the Res-  
22 olution Fund shall be admissible in any  
23 legal action brought by an eligible person  
24 against an insurer or by an insurer against  
25 an eligible person.



1           (ii) INSURER ACTION AGAINST ELIGI-  
2           BLE PERSON.—Any eligible person that re-  
3           jects a resolution offer, litigates a claim  
4           with respect to eligible costs against an in-  
5           surer, and obtains a final judgment that is  
6           less favorable than the resolution offered  
7           by the Resolution Fund, shall be liable to  
8           such insurer for 20 percent of the reason-  
9           able costs and legal fees incurred by the  
10          insurer in connection with such litigation  
11          after the resolution was offered to the eli-  
12          gible person. The district courts of the  
13          United States shall have original jurisdic-  
14          tion of all such actions, without regard to  
15          amount or value. The court shall reduce  
16          any award to an insurer in any such action  
17          by the amount, if any, of such costs and  
18          legal fees recovered by the insurer pursu-  
19          ant to State law or court rule. Nothing in  
20          this clause shall be construed to limit or  
21          affect in any way the application of State  
22          law, or the rule of any court, to such costs  
23          or legal fees.

24          (iii) REIMBURSEMENT TO INSURER.—  
25          In the case of an eligible person that re-

1       jects a resolution offer, litigates a claim  
2       with respect to eligible costs against one or  
3       more insurers, and obtains a final judg-  
4       ment against any such insurer, the Resolu-  
5       tion Fund—

6               (I) shall reimburse to such in-  
7               surer or insurers the lesser of the  
8               amount of the resolution offer made  
9               to the eligible person or the final  
10              judgment; and

11             (II) may, if the resolution offer  
12             exceeded the final judgment, reim-  
13             burse the insurer or insurers for unre-  
14             covered reasonable costs and legal  
15             fees, except that the total reimburse-  
16             ment under this subclause may not  
17             exceed the amount of the resolution  
18             offer to the eligible person.

19       Reimbursements pursuant to this clause  
20       shall be subject to such documentation as  
21       the Resolution Fund may require and shall  
22       be made by the Resolution Fund not later  
23       than 60 days after receipt by the Resolu-  
24       tion Fund of a complete request for reim-

1                   bursement as determined by the Resolution  
2                   Fund.

3                   (6) PAYMENTS CONSIDERED PURSUANT TO IN-  
4                   SURANCE CONTRACT.—Payments made by the Reso-  
5                   lution Fund pursuant to a resolution offer shall be  
6                   deemed payments made by an insurer under the  
7                   terms and conditions of a contract of insurance or  
8                   in settlement thereof. Nothing in this paragraph  
9                   shall be construed to affect in any way the issue of  
10                  whether the liability limits of a contract of insurance  
11                  has been satisfied.

12                  (7) RESOLUTION PROCESS NOT ADMISSION OF  
13                  LIABILITY.—No provision of this title, and no action  
14                  by an eligible person undertaken in connection with  
15                  any provision of this title shall in any way constitute  
16                  an admission of liability in connection with the dis-  
17                  posal of a hazardous substance.

18                  (8) REGULATIONS.—

19                         (A) PROCEDURES AND DOCUMENTA-  
20                         TION.—Not later than 120 days after the date  
21                         of enactment of this title, the Resolution Fund  
22                         shall publish in the Federal Register for public  
23                         comment of not more than 60 days interim  
24                         final regulations concerning procedures and  
25                         documentation for the submission of requests

1 for resolution offers and the payment of accept-  
2 ed resolution offers. Not later than 60 days  
3 after the close of the public comment period,  
4 the Resolution Fund shall publish in the Fed-  
5 eral Register final regulations concerning such  
6 procedures and documentation, which may be  
7 amended by the Resolution Fund from time to  
8 time.

9 (B) OTHER REGULATIONS.—The Resolu-  
10 tion Fund may prescribe such other regulations,  
11 rules and procedures as the Resolution Fund  
12 deems appropriate from time to time.

13 (C) JUDICIAL REVIEW.—No regulation,  
14 rule or procedure prescribed by the Resolution  
15 Fund pursuant to this paragraph shall be sub-  
16 ject to review by any court except to the extent  
17 such regulation, rule or procedure is not con-  
18 sistent with a provision of this title.

19 (h) JURISDICTION OF FEDERAL COURTS.—Notwith-  
20 standing section 1349 of title 28, United States Code:

21 (1) The Resolution Fund shall be deemed to be  
22 an agency of the United States for purposes of sec-  
23 tions 1345 and 1442 of title 28, United States Code.

24 (2) All civil actions to which the Resolution  
25 Fund is a party shall be deemed to arise under the

1 laws of the United States, and the district courts of  
2 the United States shall have original jurisdiction of  
3 all such actions, without regard to amount or value.

4 (3) Any civil or other action, case or con-  
5 troversy in a court of a State, or in any court other  
6 than a district court of the United States, to which  
7 the Resolution Fund is a party may at any time be-  
8 fore the trial thereof be removed by the Resolution  
9 Fund, without the giving of any bond or security, to  
10 the district court of the United States for the dis-  
11 trict and division embracing the place where the  
12 same is pending, or, if there is no such district  
13 court, to the district court of the United States for  
14 the district in which the principal office of the Reso-  
15 lution Fund is located, by following any procedure  
16 for removal of causes in effect at the time of such  
17 removal.

18 (4) No attachment or execution shall be issued  
19 against the Resolution Fund or any of its property  
20 before final judgment in any State, Federal, or other  
21 court.

22 (i) REPORTS.—

23 (1) ANNUAL REPORTS.—The Resolution Fund  
24 shall report annually to the President and the Con-  
25 gress not later than January 15 of each year on its

1 activities for the prior fiscal year. The report shall  
2 include—

3 (A) a financial statement audited by an  
4 independent auditor; and

5 (B) a determination of whether the fees  
6 and assessments imposed by section of  
7 the Internal Revenue Code of 1986 will be suf-  
8 ficient to meet the anticipated obligations of the  
9 Resolution Fund.

10 (2) SPECIAL REPORTS.—The Resolution Fund  
11 shall promptly report to the President and the Con-  
12 gress at any time the Resolution Fund determines  
13 that the fees and assessments imposed by section  
14 of the Internal Revenue Code of 1986 will be  
15 insufficient to meet the anticipated obligations of the  
16 Resolution Fund.

17 (j) FALSE OR FRAUDULENT STATEMENTS OR  
18 CLAIMS.—

19 (1) CRIMINAL PENALTIES.—

20 (A) For purposes of section 287 of title 18,  
21 United States Code (relating to false claims),  
22 the Resolution Fund shall be considered an  
23 agency of the United States and any officer or  
24 employee of the Resolution Fund shall be con-

1           sidered a person in the civil service of the Unit-  
2           ed States.

3           (B) For purposes of section 1001 of title  
4           18, United States Code (relating to false state-  
5           ments or entries), the Resolution Fund shall be  
6           considered an agency of the United States.

7           (2) CIVIL PENALTIES.—Officers and employees  
8           of the Resolution Fund shall be considered officers  
9           and employees of the United States for purposes of  
10          section 3729 of title 31, United States Code (relat-  
11          ing to false claims).

12 **SEC. 803. FINANCIAL STATEMENTS, AUDITS, INVESTIGA-**  
13 **TIONS AND INSPECTIONS.**

14          (a) IN GENERAL.—The financial statements of the  
15          Resolution Fund shall be prepared in accordance with gen-  
16          erally accepted accounting principles and shall be audited  
17          annually by an independent certified public accountant in  
18          accordance with the auditing standards issued by the  
19          Comptroller General. Such auditing standards shall be  
20          consistent with the private sector's generally accepted au-  
21          diting standards.

22          (b) INVESTIGATIONS AND OTHER AUDITS.—The In-  
23          specter General of the Environmental Protection Agency  
24          is authorized to conduct such audits and investigations as  
25          the Inspector General deems necessary or appropriate.

1 For purposes of the preceding sentence, the provisions of  
2 the Inspector General Act of 1978 shall apply to the Reso-  
3 lution Fund and to the Inspector General to the same ex-  
4 tent as they apply to the Environmental Protection  
5 Agency.

6 **SEC. 804. STAY OF PENDING LITIGATION.**

7 (a) IN GENERAL.—

8 (1) Except as provided in this section, enact-  
9 ment of this title operates as a stay, applicable to all  
10 persons other than the United States, of the com-  
11 mencement or continuation, including the issuance  
12 or employment of process or service of any pleading,  
13 motion, or notice, of any judicial, administrative, or  
14 other action with respect to claims for indemnity or  
15 other claims arising from a contract for insurance  
16 described in section 802(g)(2)(A)(ii) concerning in-  
17 surance coverage for eligible costs as defined in sec-  
18 tion 802(g)(2)(B)(i).

19 (2) Nothing in paragraph (1) shall be construed  
20 to apply to the extent the issuance or employment  
21 of process or service of any pleading, motion, or no-  
22 tice, of any judicial, administrative, or other action  
23 with respect to claims for indemnity or other claims  
24 does not concern eligible costs (as defined in section  
25 802(g)(2)(B)(i)) or a contract for insurance de-



1 scribed in section 802(g)(2)(A)(ii). An eligible per-  
2 son (as defined in section 802(g)(2)(A)) may move  
3 to sever claims not involving eligible costs from  
4 claims involving eligible costs and may proceed with  
5 the prosecution of claims not involving eligible costs.

6 (b) TERMINATION OF STAY.—

7 (1) PENDING OFFER OF RESOLUTION.—The  
8 stay established by subsection (a) shall terminate  
9 with respect to an eligible person upon the earlier  
10 of—

11 (A) the rejection of a resolution offer by  
12 such eligible person pursuant to section  
13 802(g)(5)(A); or

14 (B) the failure of the Resolution Fund to  
15 timely fulfill the terms of a resolution offer ac-  
16 cepted by such eligible person.

17 (2) EXPIRATION OF RESOLUTION OFFERS.—No  
18 stay established by subsection (a) shall be effective  
19 after May 31, 2000.

20 (c) OTHER STAYS.—Nothing in this section shall be  
21 construed to limit or affect in any way the discretion of  
22 any judicial, administrative, or other entity to maintain  
23 or impose a stay that is not required by subsection (a)  
24 but that will otherwise serve the ends of justice by staying  
25 a judicial, administrative or other action pending the ac-

1 ceptance or rejection of a resolution offer pursuant to sec-  
 2 tion 802(g)(5)(A).

3 (d) AUTHORITY OF UNITED STATES UNAF-  
 4 FECTED.—Nothing in this section shall be construed to  
 5 limit or affect in any way the discretion or authority of  
 6 the United States or any party to commence or continue  
 7 an allocation process, cost recovery, or other action pursu-  
 8 ant to the authority of sections 101–122a of the Com-  
 9 prehensive Environmental Response, Compensation and  
 10 Liability Act (42 U.S.C. 9601–9622a).

11 **SEC. 805. SUNSET PROVISIONS.**

12 (a) AUTHORITY TO ACCEPT REQUESTS FOR RESO-  
 13 LUTION.—The authority of the Resolution Fund to accept  
 14 requests for resolution shall terminate after September 30,  
 15 1999.

16 (b) AUTHORITY TO OFFER RESOLUTIONS.—The au-  
 17 thority of the Resolution Fund to offer resolutions to eligi-  
 18 ble persons shall terminate after March 31, 2000.

19 (c) CONTINUING OBLIGATIONS.—Nothing in this sec-  
 20 tion shall be construed to limit or affect in any way the  
 21 authority of the Resolution Fund—

22 (1) to make payments pursuant to resolution  
 23 offers made on or before March 31, 2000; or

24 (2) to reimburse insurers with respect to litiga-  
 25 tion commenced or continued in connection with a

1 resolution offer made on or before March 31, 2000,  
2 that was rejected by an eligible person or not acted  
3 upon by an eligible person as provided in section  
4 802(g)(5)(A).

5 **SEC. 806. SOVEREIGN IMMUNITY OF THE UNITED STATES.**

6 No obligation or liability of the Resolution Fund shall  
7 constitute an obligation or liability of the United States,  
8 or of any department, agency, instrumentality, officer, or  
9 employee thereof. No person shall have a cause of action  
10 of any kind against the United States, or any department,  
11 agency, instrumentality, officer, or employee thereof with  
12 respect to any obligation, liability, or activity of the Reso-  
13 lution Fund.

14 **SEC. 807. EFFECTIVE DATE.**

15 The provisions of this title shall become effective on  
16 the date of enactment of this title.

17 **TITLE IX—TAXES**

18 **SEC. 901. AMENDMENTS TO THE INTERNAL REVENUE**

19 **CODE OF 1986.**

20 (a) Section 59A(e)(1) of the Internal Revenue Code  
21 of 1986 (26 U.S.C. 59A(e)(1)) is amended by striking  
22 “January 1, 1996” and inserting instead “January 1,  
23 2001”.

24 (b) Section 4611(e) of the Internal Revenue Code of  
25 1986 (26 U.S.C. 4611(e)) is amended—

1 (1) in paragraph (1) by striking “December 31,  
2 1986” and inserting instead “December 31, 1995”;

3 (2) in paragraph (2)—

4 (A) by striking “December 31, 1993 or  
5 December 31, 1994” and inserting instead  
6 “December 31, 1998 or December 31, 1999”;

7 (B) by striking “December 31, of 1994 or  
8 1995, respectively” and inserting instead “De-  
9 cember 31 of 1999 or 2000, respectively”; and

10 (C) by striking “1994 or 1995” the last  
11 place it appears and inserting instead “1999 or  
12 2000”;

13 (3) in paragraph (3)(A), by striking “January  
14 1, 1987, and ending December 31, 1995” and in-  
15 serting instead “January 1, 1996, and ending De-  
16 cember 31, 2000”; and

17 (4) in paragraph (3)(B)—

18 (A) in the title thereof, by striking “Janu-  
19 ary 1, 1996” and inserting “January 1, 2001”;  
20 and

21 (B) by striking “Fund before January 1,  
22 1996” and inserting instead “Fund before Jan-  
23 uary 1, 2001”.

1 **SEC. 902. ENVIRONMENTAL FEES AND ASSESSMENTS ON**  
 2 **INSURANCE COMPANIES.**

3 (a) IN GENERAL.—The Internal Revenue Code of  
 4 1986 is amended by inserting after section the follow-  
 5 ing new section:

6 **“SEC. . ENVIRONMENTAL FEES AND ASSESSMENTS ON IN-**  
 7 **SURANCE COMPANIES.**

8 **[RESERVED]**

9 (b) CLERICAL AMENDMENT.—The table of sections  
 10 for chapter of the Internal Revenue Code of 1986  
 11 is amended by inserting after the item relating to section  
 12 the following:

“Sec. . Environmental Fees and Assessments on Insurance  
 Companies.”.

13 **SEC. 903. FUNDING PROVISIONS FOR ENVIRONMENTAL IN-**  
 14 **SURANCE RESOLUTION FUND.**

15 (a) IN GENERAL.—

16 (1) Except as provided in section 802(f)(7) of  
 17 this Act, all expenditures of the Resolution Fund  
 18 shall be paid out of the fees and assessments im-  
 19 posed by section of the Internal Revenue Code.

20 (2) Except as may be expressly authorized by  
 21 the Secretary of the Treasury, all funds of the Reso-  
 22 lution Fund shall be maintained in the Treasury of  
 23 the United States. The Secretary may provide for  
 24 the disbursement of such funds to the Resolution

1 Fund or on behalf of the Resolution Fund under  
2 such procedures, terms and conditions as the Sec-  
3 retary may prescribe.

4 (b) TRANSFER TO RESOLUTION FUND.—The Sec-  
5 retary of the Treasury shall transfer to the Resolution  
6 Fund on October 1 of fiscal years 1995, 1996, 1997, 1998  
7 and 1999, an amount equal to the fees and assessments  
8 anticipated to be collected pursuant to section of the  
9 Internal Revenue Code of 1986 during the then current  
10 fiscal year.

11 (c) ADJUSTMENTS.—In each succeeding fiscal year  
12 the Secretary of the Treasury shall adjust the amounts  
13 transferred pursuant to paragraph (2) to reflect actual  
14 collections of fees and assessments during the prior fiscal  
15 year, except that with respect to the transfer made on Oc-  
16 tober 1, 1999, the Resolution Fund shall reimburse the  
17 Secretary the amount of such transfer subsequently deter-  
18 mined by the Secretary to have exceeded actual collections  
19 of fees and assessments during such fiscal year.

20 **SEC. 904. RESOLUTION FUND NOT SUBJECT TO TAX.**

21 The Resolution Fund, including its capital, reserves,  
22 surplus, security holdings, and income shall be exempt  
23 from all taxation now or hereafter imposed by the United  
24 States (including any territory, dependency or possession

1 thereof) or any State, county, municipality or local taxing  
2 authority.

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